

**GROUND LEASE
(NEW FACILITY)**

Circle K Store Site:

**South-East Corner of Golf Course Rd. & Westside Blvd.,
Albuquerque, New Mexico**

GROUND LEASE
("Lease")

Landlord: RS Golf Course, LLC, a Texas limited liability company

Landlord Notice Address: 2560 King Arthur Blvd., Suites 124-104
Lewisville, TX 75056
Attn: Kevin Mattson
Email: kmattson@redskyholdings.com

Tenant: Circle K Stores Inc., a Texas corporation

Tenant Notice Address: Circle K Stores Inc.
(Prior to Commencement) 5500 South Quebec, Suite 100
Greenwood Village, Colorado
Attn: Real Estate Department
Email: zmurphy@circlek.com

With Copy to:

Circle K Stores Inc.
Legal Department – Real Estate
19500 Bulverde Road, Suite 100
San Antonio, Texas 78259
Attn: Murray H. Van Eman – Director of Legal Affairs
Email: Murray.VanEman@circlek.com

Tenant Notice Address: Circle K Stores Inc.
(Following Commencement) 19500 Bulverde Road, Suite 100
San Antonio, Texas 78259
Attn: Property Management

With Copy to:

Circle K Stores Inc.
Legal Department – Real Estate
19500 Bulverde Road, Suite 100
San Antonio, Texas 78259
Attn: Portfolio Counsel

Effective Date: The date upon which Escrow Agent has in its possession at least one fully executed original or electronic counterpart of this Lease and, and, by its execution below, accepts this Lease into escrow. Escrow Agent will indicate the date of the Effective Date on Escrow Agent's Acceptance attached following the signature page of this Lease.

Feasibility Period: One hundred twenty (120) days after the Effective Date, subject to extension in accordance with Section 2.3.1.

Permit Period: One hundred twenty (120) days after the expiration of the Feasibility Period.

Landlord's Work Period: Thirty (30) days after the expiration of the Permit Period.

Construction Period: One hundred eighty (180) days after the expiration of the Landlord's Work Period.

Commencement Date: First day of the calendar month following the earlier to occur of: (i) the date Tenant opens for business in the Leased Premises; or (ii) the expiration of the Construction Period, subject to those extensions established in the Lease (if any).

Primary Term: Fifteen (15) years commencing with the Commencement Date.

Extension Terms: Eight (8) additional and consecutive terms of five (5) years each (each an "**Extension Term**").

Base Rent:



Leased Premises: Approximately 87,120 square feet of real property depicted or described on **Exhibit "A-1"** that is leased by Landlord to Tenant under the terms of this Lease (the "**Leased Premises**"), together with all rights, privileges, easements and appurtenances thereto, and, if, if Tenant is able to obtain the South Access Permit (as hereinafter defined), that certain tract of land depicted with hatching and labeled Additional Land on **Exhibit "A-4"** attached hereto (the "**Additional Land**") together with all rights, privileges, easements and appurtenances set forth in the Access Easement and Restriction Agreement (as herein defined). The Leased Premises and the Additional Land is a portion of a larger parcel of real property owned by the Dennis and George, LLC, as more particularly described on **Exhibit "A-5"**, attached hereto (the "**Parent Tract**"). The Parent Tract, save and except the Leased Premises (and if applicable, the Additional Land), is referred to herein as the "**Remainder Property**". If Tenant is able to obtain the South Access Permit (as

herein defined) then the term “Leased Premises” as used herein shall in all instances be deemed to include the Additional Land. For further clarification, the Base Rent set forth herein shall not be increased if the Additional Land is included in the Leased Premises.

Tenant’s Broker:

NAI Maestas & Ward
6801 Jefferson Road NE, Suite 200
Albuquerque, NM 87109
Attn: Keith Meyer and Jim Wible
Facsimile: (505) 878-0002

Escrow Agent:

First American Title Insurance Company
National Commercial Services
13750 San Pedro, Suite 620
San Antonio, Texas 78232
Attn: Corina Cashion
Direct: (210)780-3167
e-mail: CCashion@firstam.com

THE TERMS LISTED ABOVE ARE DEFINED TERMS THAT ARE USED THROUGHOUT THIS LEASE AND WHOSE DEFINITIONS MAY BE MODIFIED UNDER THE TERMS AND CONDITIONS BELOW.

This Ground Lease (“**Lease**”) is executed as of the Effective Date by Landlord and Tenant with respect to the Leased Premises described below.

1. Agreement to Lease; Defined Terms

1.1 **Lease of Leased Premises.** Landlord agrees to lease to Tenant, and Tenant agrees to lease from Landlord, on the terms, conditions, and limitations established in this Lease, exclusive possession and use of the Leased Premises for the Lease Term.

1.2 **Defined Terms.** When used in this Lease, defined terms should have the meanings established in this Lease. Various defined terms are defined above, and various other terms are defined below as well as in other areas in the text of this Lease.

1.2.1 **“Delivery Date”** means the date Landlord delivers possession of the Leased Premises to Tenant in compliance with the conditions of Section 3 below.

1.2.2 **“Facilities”** means all buildings that contain Tenant’s business operations (i.e., the Circle K Store) and related improvements (including paved areas, etc.) to be constructed by Tenant pursuant to this Lease. For added clarification, the term **“Facilities”** generally describes the items to be constructed on the real property that constitutes the Leased Premises. References in this Lease to the term **“Facilities,”** however, specifically exclude Tenant’s Improvements, as defined below. Tenant’s Improvements and the Facilities shall be and remain at all times Tenant’s sole property. For the avoidance of doubt, Tenant alone shall have the right to deduct all depreciation on Tenant’s income tax returns for the Facilities and Tenant’s Improvements and any alterations, improvements or additions thereto and title to all such improvements shall be vested in Tenant.

1.2.3 **“Governing Authorities”** means all federal, state, local (municipal and/or county), private, and quasi-governmental agencies, departments, councils, boards, commissions, authorities, and the like that have jurisdiction over the development, construction, and/or use of the Leased Premises, including any provider utility companies and applicable community or homeowner associations.

1.2.4 **“Landlord Parties”** means Landlord and each of the following: (i) all successors and assigns of Landlord whether by merger, consolidation, assignment, or other form of contractual relationship or business organization; (ii) all affiliates of Landlord and those entities controlled by or under common management and control of Landlord; and (iii) any successor in interest to Landlord under this Lease or the interest of Landlord in the Leased Premises.

1.2.5 **“Landlord’s Work”** means the development and construction work required to be performed by Landlord under this Lease as established in Section 4.2 below.

1.2.6 “*Permittees*” means all employees, customers, vendors, suppliers, invitees, licensees, authorized representatives, contractors, assignees, sublessees, concessionaires, consultants, and other permitted persons of the party in question. For example, “**Tenant’s Permittees**” means all of the foregoing persons properly on or in use of the Leased Premises for Tenant’s business.

1.2.7 “*Site Plan*” means the diagram of the Leased Premises (or pertinent portions) attached as **Exhibit “A-2”**.

1.2.8 “*Tenant’s Improvements*” means all of the following used in connection with Tenant’s business: (i) personal property, trade fixtures, furniture, and equipment including, for example, cash registers, food or beverage dispensers, microwaves, warmers, walk-in cooler boxes, doors, shelving, refrigeration units, and communication equipment, whenever and wherever placed within the Leased Premises; (ii) all car wash facilities, canopies, fuel dispensing bays, fuel dispensers, product distribution lines, fuel lines (for gasoline or other motor fuels or any other common methods of propelling motor vehicles), and USTs related to Tenant’s motor vehicle fuel operations (called, collectively, the “**Motor Vehicle Fuel Improvements**”); and (iii) all signage attached to Tenant’s Facilities, all pylon signs located from time to time on the Leased Premises, and all monument signs reserved for Tenant’s sole use that may be located from time to time on the Leased Premises (called, collectively, the “**On-Site Signage**”). Tenant may remove or replace Tenant’s Improvements at any time during the Lease Term.

1.2.9 “*Tenant’s Work*” describes the development and construction that Tenant may elect to perform with respect to the Leased Premises.

1.2.10 “*USTs*” means, with reference to the Leased Premises, all underground storage tanks and underground product distribution lines related to Tenant’s fueling operations, whether motor fuel or other energy source stored and/or distributed through underground facilities or lines.

2. Feasibility Period Conditions.

2.1 **Escrow.** Upon execution of this Lease and for the purposes of performing those duties of the Escrow Agent outlined in the Lease (i.e., preparing the title report, holding funds, and issuing the leasehold title insurance policy), Tenant and Landlord shall open an escrow with Escrow Agent. The escrow shall expire following the Commencement Date and the application of all funds held in escrow, if any, to Tenant’s obligation to pay Base Rent.

2.2 **Delivery of Materials.** Landlord acknowledges that certain permits and approvals are necessary for Tenant’s Use (as defined below) of the Leased Premises and that Tenant will require time to inspect the Leased Premises and to determine the suitability of the Leased Premises for its purposes. Within 5 days after the Effective Date of this Lease, Landlord shall deliver copies to Tenant of all title reports, surveys, environmental reports, engineering reports, appraisals, permits, plan approvals, governmental approvals (including site plan, zoning, and development

stipulations), and any other information relating to the Leased Premises that Landlord has in its possession regarding the Leased Premises.

2.3 ***Tenant's Conditions Precedent – Feasibility Period.*** This Lease and Tenant's obligations under this Lease are subject to Tenant's satisfaction or waiver of all of the following conditions (all of which are called collectively the "**Feasibility Period Conditions**") by the expiration of the Feasibility Period:

2.3.1 ***Landlord's Ownership.*** Landlord, or an affiliate of Landlord, shall have acquired fee simple ownership of the Leased Premises. As of the Effective Date, Landlord is a party to a binding contract pursuant to which Landlord will acquire fee simple title to the Leased Premises (the "**Purchase Contract**"). If the transaction contemplated in the Purchase Contract does not close prior to the expiration of the Feasibility Period, then the Feasibility Period shall be automatically extended until a date which is five (5) days after the transaction contemplated in the Purchase Contract closes. In the event that an affiliate of Landlord acquires the Leased Premises pursuant to the Purchase Contract, then immediately upon such acquisition Landlord shall assign this Lease to such affiliate and such affiliate shall agree in writing to assume all of Landlord's obligations herein

2.3.2 ***Title Review.*** Tenant shall have approved the condition of title to the Leased Premises. Tenant shall cause Escrow Agent to prepare a current title commitment for the Leased Premises, at no cost to Landlord. Tenant shall review: (i) the condition of title; (ii) the title company's conditions for issuance of a leasehold policy of title insurance in the amount determined by Tenant; (iii) the final form of the Access Easement and Restriction Agreement (as defined below). Prior to the end of the Feasibility Period, Tenant shall notify Landlord of any title objections that Landlord must cure (either by removal or endorsement, in form and substance acceptable to Tenant), by no later than 30 days after the expiration of the Feasibility Period, in order for this condition to be satisfied to Tenant's sole satisfaction. Notwithstanding the foregoing, since Tenant is acquiring only a leasehold interest in the Leased Premises, Tenant shall not object to any consensual lien placed upon the Leased Premises by Landlord (so long as Landlord provides a subordination, non-disturbance, and attornment agreement) or any other title matter that will not unreasonably interfere with access to or Tenant's use of the Leased Premises. Provided that Tenant has not terminated this Lease in accordance with its terms, Landlord shall record the Access Easement and Restriction Agreement as approved by Tenant upon the expiration of the Feasibility Period.

2.3.3 ***Survey Review.*** Tenant shall have approved the conditions revealed by any existing or future survey of the Leased Premises. Tenant may obtain and review any surveys of the Leased Premises as it deems necessary or as may be required by a title company as a condition of issuing title insurance. Landlord, promptly after execution of this Lease, shall provide to Tenant copies of any surveys that Landlord has in its possession. Tenant acknowledges that any surveys provided by Landlord to Tenant are offered as an accommodation and that Landlord makes no warranties as to the age or accuracy of any surveys. Prior to the end of the Feasibility Period, Tenant shall notify Landlord of any survey objections that Landlord must cure (either by removal or endorsement, in form and substance acceptable to Tenant) by no later than 30 days after the expiration of the

Feasibility Period for this condition to be satisfied to Tenant's sole discretion. If Tenant does not obtain a current survey, Tenant shall be deemed to have waived all conditions that would be shown by a current and accurate survey.

2.3.4 *Management Approval.* Tenant shall have obtained the approval of its (or its corporate parent's) senior management and/or Board of Directors. Tenant shall use reasonable efforts to obtain this approval and shall promptly notify Landlord of the approval or disapproval of the transaction.

2.3.5 *Physical Inspection.* Tenant shall have approved the physical and environmental condition of the Leased Premises. Tenant is granted the right to inspect the Leased Premises and any improvements located on, at, or under the Leased Premises at any reasonable time during the Feasibility Period, for the purpose of inspecting the existing condition of the Leased Premises and the suitability for the construction and operation of the Facilities. As of the Effective Date, Landlord has provided Tenant with a Right of Entry Agreement containing a representation and warranty from Landlord that Tenant has the right to enter and inspect the Leased Premises under the terms of the Purchase Contract. Upon request from Tenant, Landlord shall provide a copy of additional written confirmation to Tenant. In the event that the Right of Entry Agreement expires prior to the expiration of the Feasibility Period, Landlord will provide Tenant with an amendment extending Tenant's rights thereunder and the Feasibility Period shall be automatically extended on a day for day basis for each day that Tenant does not have the right to access the Leased Premises under the Right of Entry Agreement. All inspections shall include the right to conduct subsurface testing for the presence of Hazardous Materials, though Tenant shall have no liability for the discovery of any Hazardous Materials during testing. As used in this Lease, "**Hazardous Materials**" shall mean any oil or petroleum product, explosives, asbestos, urea formaldehyde, or other hazardous, toxic, contaminated, or polluting materials, substances, or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" in quantities that are regulated under any federal, state, or local law, ordinance, rule, or regulation relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal, or transportation of these materials. If Landlord discloses the existence of Hazardous Material contamination in excess of Agency Standards (as defined in Section 7.4 below) at the Leased Premises or if Tenant discovers the presence of Hazardous Material contamination in excess of Agency Standards on, at or under the Leased Premises within six months after the Delivery Date (called, in either case, an "**Existing Contamination**"), Landlord shall address the Existing Contamination in accordance with the provisions of the attached **Exhibit "C"**.

2.3.6 *Landlord's Governmental Approvals.* Landlord, at Landlord's sole cost and expense, shall have obtained all required approvals under the Governing Authorities, for the approval and filing of a lot split, minor land division, plat or replat (as applicable) of the Parent Tract so that the Leased Premises constitutes a legal lot separate from the Remainder Property (the "**Plat**"), which is eligible for a separate tax parcel number. Landlord will file all applications and to take all other lawful actions appropriate to complete the Plat. Landlord agrees that the existing curb cuts onto Golf Course Road and Westside Drive (the "**Existing Access**") shown by the existing Development plat will be

retained and reflected on the Plat. Tenant, at no additional cost, will cooperate in all reasonable respects with Landlord in applying for and obtaining the Plat, including, without limitation: (i) agreeing to such easements as are reasonably required by any Governing Authorities; (ii) executing all documents required by any Governing Authorities; and (iii) providing to Landlord or the appropriate Governing Authority such items as Landlord or such Governmental Authority may reasonably request in order to complete the Plat. Landlord shall not record the Plat or make any modifications to the Plat unless such Plat and modifications are approved by Tenant. Notwithstanding anything contained herein to the contrary, Landlord shall have until the date that is two hundred ten (210) days after the Effective Date to record the Plat as provided herein; provided, however, that the Permit Period shall be automatically extended day for day for each day of delay beyond the expiration of the Inspection Period until Landlord records the Plat and provides written notice of the same to Tenant.

2.3.7 *The South Access Permit.* Notwithstanding anything contained herein to the contrary, Tenant shall, during the Feasibility Period, cooperate with the owner of the Remainder Property to pursue any permits required to permit Tenant to install a curb cut for the Southern Drive (as defined below) and construct the Southern Drive (collectively, the “**South Access Permit**”). If Tenant is unable to obtain the South Access Permit during the Feasibility Period (the “**South Access Permit Contingency**”) but does not elect to terminate this Lease in accordance with Section 2.4 or Section 3.3 of this Lease, then the Leased Premises shall automatically be deemed not to include the Additional Land and Tenant shall be deemed to have waived the South Access Permit Contingency. Tenant acknowledges that the owner of the Remainder Property shall be responsible for preparing the design, specifications, engineered plans for the Southern Drive and for submitting all applications for the South Access Permit to governmental authorities having jurisdiction over the construction of the Southern Drive (collectively, the “**South Access Permit Application Items**”). Tenant shall, within ten (10) Business Days after receipt of written request for reimbursement for the costs South Access Permit Application Items (the “**South Access Permit Costs**”), reimburse the owner of the Remainder Property the South Access Permit Costs. Landlord shall cause the plans and specifications for the Southern Drive to be delivered to Tenant for review and approval, not to be unreasonably conditioned, withheld, or delayed, within thirty (30) days after the Effective Date.

2.3.8 *The West Side Boulevard Access Improvements.* Notwithstanding anything contained herein to the contrary, Landlord and Tenant shall, during the Feasibility Period, cooperate with the owner of the Remainder Property to pursue any permits required to for the owner of the Remainder Property to construct and install the West Side Boulevard Access Improvements (as defined below) (collectively, the “**West Side Boulevard Access Permit**”). If the owner of the Remainder Property is unable to obtain the West Side Boulevard Access Permit during the Feasibility Period (the “**West Side Boulevard Access Permit Contingency**”), then Tenant shall have the right to terminate this Lease in accordance with Section 2.4 of this Lease. Tenant acknowledges that the owner of the Remainder Property shall be responsible for: (a) preparing the design, specifications, engineered plans for the off-site left-hand turn lane for vehicular access from West Side Boulevard to the Premises and the Remainder Property (the “**West Side Boulevard Access Improvements**”), and (b) for submitting all applications for the West Side Boulevard

Access Permit to governmental authorities having jurisdiction over the construction of the West Side Boulevard Access Improvements, and (c) for the construction and installation of the West Side Boulevard Access Improvements (collectively, the “**West Side Boulevard Access Work**”). Following the completion of the West Side Boulevard Access Improvements in accordance with the West Side Boulevard Access Improvement Plans (as defined below) and following the expiration of the Permit Period, Tenant shall, within ten (10) Business Days after receipt of written request for reimbursement for the costs West Side Boulevard Access Work together with copies of all invoices and receipts evidencing such costs, reimburse the owner of the Remainder Property the cost of the West Side Boulevard Access Work, not to exceed Forty Thousand and 00/100 Dollars (\$40,000.00). Landlord shall cause the plans and specifications for the West Side Boulevard Access Improvements Drive to be delivered to Tenant for review and approval, not to be unreasonably conditioned, withheld, or delayed, within thirty (30) days after the Effective Date (the “**West Side Boulevard Access Improvement Plans**”).

2.3.9 *The Access Easement and Restriction Agreement* . In order for Tenant to have full use and enjoyment of the Leased Premises, Tenant requires reasonable access easement rights over and upon the Remainder Property. To provide for such rights and certain conditions, covenants and restrictions for the benefit of both the Leased Premises and the Remainder Property, which will include use restrictions as set forth herein, Landlord will, prior to the expiration of the Feasibility Period, present to the owner of the Remainder Property a form of reciprocal access easement agreement binding upon the Leased Premises and the Remainder Property (the “**Access Easement and Restriction Agreement** ”), subject to Tenant’s review and approval in accordance with Section 2.3.2 above. If Tenant is able to obtain the South Access Permit, then the Access Easement and Restriction Agreement will expressly (i) grant an access easement to Tenant and the Leased Premises over the Southern Drive (defined below), (ii) provide that Tenant shall construct the Southern Drive at its sole cost and expenses, and (iii) provide that if any other owner or occupant of the Remainder Property is granted a right to use the Southern Drive such occupant will contribute proportionately to the maintenance of the Southern Drive. The Access Easement and Restriction Agreement shall be recorded by Landlord, at its sole cost and expense, in the appropriate registry of land records, simultaneously upon the closing of the Purchase Contract. Landlord and Tenant shall use good faith, commercially reasonable efforts to negotiate said Access Easement and Restriction Agreement during the Feasibility Period. The Access Easement and Restriction Agreement shall include, among other things: (a) the right of pedestrian and vehicular access through the Remainder Property, (b) the restrictions related to the operation of Remainder Property Prohibited Uses and the sale of Remainder Property Restricted Items set forth in Article 8 below, (c) a provision stating that there shall be no shared parking between the Leased Premises and the Remainder Property, and (d) a provision requiring Tenant’s consent to any amendment of the Access Easement and Restriction Agreement so long as this Lease is in effect. In the event of any conflict between the Access Easement and Restriction Agreement and this Lease, the terms of this Lease shall control over the terms of the Access Easement and Restriction Agreement. Landlord shall not amend or modify the Access Easement and Restriction Agreement without Tenant’s review and approval, which approval shall not be unreasonably withheld or delayed.

2.4 **Termination; Waiver.** If Tenant is dissatisfied with any aspect of the Leased Premises as a result of its investigations during the Feasibility Period, Tenant may terminate this Lease by notifying Landlord of the termination prior to the end of the Feasibility Period (as may be extended). Additionally, if Tenant objects to any title or survey matters as permitted in this Lease, and Landlord fails or refuses to cure the objections on a timely basis (unless waived by Tenant), Tenant may terminate this Lease. If the Lease is terminated as established above, Escrow Agent shall return to Tenant any escrowed deposits, and neither Landlord nor Tenant shall have any further obligation to the other, except for any third-party claims arising from Tenant's entry to the Leased Premises for inspection. Tenant's failure to notify Landlord of its election to terminate the Lease by the end of the Feasibility Period for a failure of a Feasibility Period Condition shall be deemed to be a waiver of all Feasibility Period Conditions.

3. **Delivery of Premises.**

3.1 **Delivery Date.** Landlord shall deliver exclusive possession of the Leased Premises to Tenant on a date (the "**Delivery Date**") that is the later of: (i) the satisfaction or waiver by Tenant of the Feasibility Period Conditions; (ii) the cure by Landlord of any title and survey objections made by Tenant under Sections 2.3.2 or 2.3.3 above; (iii) expiration of Landlord's Work Period; and (iv) substantial completion of Landlord's Work. The items described in the prior sentence may be collectively referred to as the "**Delivery Date Conditions.**" Landlord and Tenant shall promptly, after the Delivery Date and when requested by Landlord, execute and exchange fully-signed copies of the Delivery Date Agreement attached as **Exhibit "D"**.

3.2 **Permit Period.** Following the expiration of the Feasibility Period, Tenant shall have until the expiration of the Permit Period within which to obtain all approvals, excluding the South Access Permit, required of the Governing Authorities (called "**Tenant's Permit Approvals**") to enable Tenant to develop, construct, and use (at a development and construction design and cost acceptable to Tenant and consistent with the approval of Tenant's management and conditions and stipulations acceptable to Tenant) the Leased Premises for Tenant's intended use, including: (i) building permits; (ii) approved site development plans, development plans, working drawings, curb cuts, traffic signals, signage, lighting, access, deceleration lanes, median breaks, drainage plans, landscape plans, and similar development and construction matters; (iii) rezoning of the Leased Premises if required for Tenant's intended development and use of the Leased Premises as a convenience store and gas station to permit; and (iv) operating, liquor, alcoholic beverage, food service, gaming, and motor fuel facility permits. Notwithstanding the foregoing, if Tenant requires the Leased Premise to be rezoned, Landlord shall have the right to approve of the new zoning district, such approval not to be unreasonably withheld, conditioned, or delayed. Tenant shall notify Landlord of the proposed zoning district change and the Landlord shall have ten (10) days thereafter to review and provide its approval or disapproval. Landlord's failure to respond within such 10-day period shall be deemed an approval. Landlord shall cooperate with Tenant's efforts to obtain the Tenant's Permit Approvals. If Tenant has not been able to obtain Tenant's Permit Approvals by the end of the Permit Period (as may be extended), Tenant may terminate the Lease and receive a refund of any escrowed deposits, in which case neither Landlord nor Tenant shall have any further obligations to the other, except for third party claims arising from Tenant's entry to the Lease Premises for inspection.

3.2A. **Conditional Use Permit Contingency.** Tenant shall have until the expiration of the Permit Period to obtain the conditional use permit required for the intended use (the “CUP”). Landlord shall cooperate, at no cost or expense to Landlord, with Tenant’s efforts to obtain the CUP. If Tenant has not been able to obtain CUP by the end of the Permit Period (as may be extended), Landlord or Tenant may terminate the Lease, in which event Tenant shall receive a refund of any escrowed deposits, and neither Landlord nor Tenant shall have any further obligations to the other, except for third party claims arising from Tenant’s entry to the Lease Premises for inspection.

3.3 **Construction Period.** Tenant may elect to commence construction of Tenant’s Work at any time during the term of the Lease. The Construction Period does not designate a time period within which Tenant must complete Tenant’s Work; rather, the Construction Period merely identifies an additional period of time prior to the commencement of Tenant’s obligations to pay rent under this Lease and during which Tenant may commence or complete construction.

3.4 **No Rent.** No Base Rent or Additional Rent shall be due for any period of time prior to the Commencement Date. The period of time described in the prior sentence is referred to as the “**Initial Term.**”

4. **Construction of Improvements.**

4.1 **Tenant’s Work.** Tenant is solely responsible to design, entitle, permit, and construct (if applicable) the Facilities and Tenant’s Improvements at the Leased Premises. Tenant shall be solely responsible for complying with the requirements of the applicable Governmental Authorities related to detention and shall cause the detention to be self-contained on the Leased Premises. Landlord shall have the right to approve any changes to the Existing Access (as defined below) and the grading plans and specifications for Tenant’s Work to ensure that development on the Leased Premises is harmonious with the Remainder Property. Additionally, Tenant shall, at its sole cost and expense and as a part of Tenant’s Work, (i) construct that certain driveway curb cut depicted with cross-hatching and labeled “Southern Drive” on **Exhibit “A-3”** and construct the Southern Drive prior to the expiration of Landlord’s Work Period. The Access Easement and Restriction Agreement shall provide for a temporary construction easement in connection with Tenant’s construction of the Southern Drive; and (v) construct and install all off-site improvements (including, but not limited to, roads, traffic signals, deceleration lanes, drive aprons, drive aisles, and perimeter landscaping and screenwalls) necessary for the Southern Drive.

4.2 **Landlord’s Work.** Landlord represents and warrants to Tenant that from and after the Effective Date, Landlord will not change the native grade of the Leased Premises without first obtaining Tenant’s Written Consent. Landlord represents and warrants to Tenant that: (i) all vegetation and any vertical structures located on the Leased Premises have been removed and disposed of; (ii) the Leased Premises is free of debris; (iii) all water, sewer, electricity, natural gas (if applicable), fire lines, telephone, and cable lines required for Tenant’s Use of the Leased Premises are or will be operational and delivered to an area at least one foot inside the boundary of the Leased Premises; (iv) the circulation drive and access thereto as depicted with hatching and labeled “Circulation Drive on **Exhibit “A-3”** (the “**Circulation Drive**”) is complete; and (v)

construct and install all off-site improvements (including, but not limited to, the West Side Boulevard Access Improvements and roads, traffic signals, deceleration lanes, drive aprons, drive aisles, and perimeter landscaping and screenwalls) necessary for Tenant to procure grading and building permits for the Leased Premises and obtain its certificate of occupancy have been constructed or installed or will be constructed and installed during Landlord's Work (except for such off-site improvements required in connection with the Southern Drive). The foregoing items (i) through (v) are collectively called "**Landlord's Work.**" In the event that prior to the end of the Landlord's Work Period, Tenant determines that Landlord's Work is not complete, or cannot be reasonably completed prior to the expiration of Landlord's Work Period, Tenant, after providing Landlord with written notice may elect to cure the default in accordance with Section 14.3.1 and setoff or deduct all costs and expenses reasonably incurred by Tenant in completing Landlord's Work from Base Rent, Additional Rent or any other charges otherwise due under this Lease. Tenant will also receive base rent credit of three (3) days rent for each day the Landlord's Work is delayed after the 90th day following the end of the Landlord's Work Period until the Landlord's Work is finished and certified as complete. This penalty clause is intended to ensure that the Landlord completes the work as described and does not hinder the Tenant's ability to complete their work and open the location on schedule.

5. Term.

5.1 **Primary Term.** This Lease is valid and enforceable as of the Effective Date and through the Initial Term, subject to the terms and conditions described in this Lease. The commencement of the rental payments under the Lease shall begin on the Commencement Date and shall remain in effect through the Primary Term and any Extension Terms. Landlord and Tenant shall promptly, after the occurrence of the Commencement Date, execute and exchange fully-signed copies of the Commencement Date Agreement attached as **Exhibit "E"**.

5.2 **Extension Terms.** As a further material consideration for the execution of this Lease, Tenant is granted the irrevocable and exclusive right and option to extend the Primary Term upon the same terms, covenants, and conditions established in this Lease, but at the rental rate set forth in Article 6 below, for any one or more of the Extension Terms, as Tenant may elect. At least 60 days prior to the expiration of the Lease Term then in effect, and so long as Tenant is not then in monetary default of any provision of this Lease beyond the applicable notice and cure period(s), Tenant shall provide Landlord with written notice of each election to extend the Lease Term, together with the declared term of the extension. If Tenant has not provided the written election to extend at least 60 days prior to the expiration of the applicable Lease Term, Landlord shall deliver a written notice ("**Wake-Up Notice**") to Tenant advising Tenant that the time periods for Tenant's election to extend have expired and that, should Tenant fail to exercise its extension election within 10 business days from the date of Tenant's receipt of the Wake-Up Notice, Tenant shall have no further extension elections. Landlord shall not be required to give the Wake-Up Notice if Tenant has made an affirmative written election to terminate the Lease or to not exercise an applicable extension election.

5.3 **Holdover Term.** If Tenant shall hold over after the expiration of the Primary Term or any extension or renewal of such term, the holdover tenancy shall continue in accordance with

all the terms of this Lease, except that Base Rent shall equal 115% of the Base Rent in effect at the end of the Lease Term (the holdover period shall be referred to in this Lease as the “**Holdover Term**”). Landlord shall be deemed to consent to Tenant’s holding over if it is reasonably required by Tenant to perform or satisfy any of Tenant’s obligations to Landlord under this Lease, applicable law, or otherwise. However, Tenant’s activities on the Leased Premises pursuant to Section 7.8 shall not be deemed a holdover pursuant to this Section 5.3. Except as provided herein, a Holdover Term may be terminated by either Landlord or Tenant upon not less than 30 days written notice; however, any Holdover Term shall end only at the end of a calendar month.

5.4 **Lease Term.** The Initial Term, Primary Term, Extension Terms, Holdover Term, and any and all other extensions or renewals of the Lease are collectively referred to throughout this Lease as the “**Lease Term.**”

6. **Rental.**

6.1 **Base Rent.** Upon satisfaction or waiver of all applicable conditions contained in the Lease to the payment of rent, Tenant shall pay to Landlord the Base Rent for each applicable month during the Lease Term, beginning at those times and dates established in this Lease. Base Rent shall be paid in advance on the first day of each calendar month, without notice, demand, offset or deduction, except as otherwise expressly provided in this Lease. Rent for any period less than a calendar month shall be prorated, based on the number of calendar days in the month.

6.2 **Base Rent Adjustments.**



6.3 **Additional Rent.** In addition to the Base Rent, Tenant shall pay prior to delinquency, throughout the Lease Term, as additional rental (“**Additional Rent**”), the following items:

6.3.1



6.3.2



6.3.3



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6.4 **Payment of Rental.** Tenant shall pay the rental provided in this Lease to Landlord, when due, at Landlord's office, or to any other person or place as Landlord may designate by notice to Tenant.

6.5 **Security Deposit.** Tenant shall not be required to pay a security deposit.

6.6 **Tenant Overpayments.** If either Landlord or Tenant discover, at any time during the Lease Term or within a reasonable time afterwards, that Tenant has paid Landlord rental or other amounts in excess of those amounts that Tenant was obligated to pay at the time, the applicable party shall promptly notify the other party and, without prejudice to any other remedies, whether legal or equitable, available to Tenant, Tenant shall have the right to treat all or a portion of the overpaid amounts as pre-paid rental, in which event the portion treated as pre-paid rental shall be applied as a credit toward future amounts due Landlord from Tenant under this Lease, and any amount that exceed future amounts due shall be promptly refunded to Tenant.

7. Possession and Use.

7.1 **Tenant's Use.** Subject to the Access Easement and Restriction Agreement and any encumbrances of record as of the end of the Feasibility Period affecting the Leased Premises, the Leased Premises may be used and occupied by Tenant for all legal purposes. Nothing in this Lease shall be construed as an express or implied covenant by Tenant to open for business or to continuously operate or conduct any business or activity on the Leased Premises during the Lease Term. In addition to all other legally permitted uses of the Leased Premises, Landlord expressly acknowledges Tenant's plan to utilize the Leased Premises as a 24-hour convenience store selling products and services, including alcoholic beverages, motor fuels (or other common methods of propelling vehicles), and lottery tickets (and other permitted gaming) and, possibly, as a car wash and as a quick serve restaurant (with all permitted uses being called, collectively, "**Tenant's Use**"). Nothing contained in this Lease shall prohibit Tenant from obtaining a retail off-sale liquor license in accordance with existing laws.

7.2 **Compliance with Laws.** Tenant, at no cost or expense to Landlord, shall promptly and properly observe, comply with and execute all present and future orders, regulations, directions, rules, laws, ordinances, and requirements of all Governing Authorities that arise directly from Tenant's use, occupancy, or enjoyment of all or part of the Leased Premises during the Lease Term.

7.3 **Hazardous Materials.** At all times during the Lease Term, Tenant shall maintain the Leased Premises in compliance with all applicable laws and regulations, including those relating to the operation of USTs. Tenant shall obtain and maintain in full force and effect all permits, licenses, and other governmental approvals required for operation of its USTs and shall comply with all their terms and conditions. Tenant may use or otherwise handle on the Leased Premises quantities of Hazardous Materials consistent with Tenant's Use. Tenant shall: (i) pay all fines, damages, and penalties imposed by any governmental agency resulting from Tenant's violation of any applicable Laws relating to Tenant's USTs; and (ii) assess, monitor, and/or remediate (collectively "**Corrective Action**") any release of motor fuels or other Hazardous Materials resulting from its operations at the Leased Premises during the Term, to the extent required by the federal, state, or local environmental agency with oversight jurisdiction over the Leased Premises (the "**Environmental Agency**"). With respect to any fees for the Motor Vehicle Fuel Improvements under any applicable, state-sponsored underground storage tank liability trust fund or program now or hereafter in effect intended to fund the remediation of contamination caused by leaking underground storage tanks, Tenant shall pay such fees during the Lease Term. Landlord agrees to forward to Tenant, within five (5) days following receipt, all notices, invoices, and other written communications received from any Environmental Agency in connection with such fees.

7.4 **Corrective Action.** Any Corrective Action required by this Lease shall be performed at no cost to Landlord, and shall conform to the following standards:

7.4.1 **Standards for Corrective Action.** Corrective Action shall be performed in accordance with the requirements and timetables of the Environmental Agency for non-residential property, including risk-based closure, if permitted ("**Agency Standards**").

7.4.2 *Completion of Corrective Action.* Corrective Action shall be complete upon the earlier to occur of: (i) receipt of written notice from the Environmental Agency that either: (i) no further action with respect to the Covered Contamination is required; or (ii) all work under Tenant's approved Corrective Action plan has been completed; provided that Tenant has determined that the soil and groundwater at the Leased Premises have been remediated in accordance with Agency Standards, based on four successive quarterly monitoring tests by a licensed environmental contractor, showing the level of contamination resulting from Tenant's operation at the Leased Premises to be equal to or below Agency Standards. Tenant shall notify Landlord in writing when Corrective Action is complete.

7.5 *Improvements.* Subject to the approval of the Governing Authorities and the acquisition of any required permits, and in compliance with the Access Easement and Restriction Agreement, Tenant may place and maintain on the Leased Premises any and all Tenant's Improvements as it may desire for Tenant's Use, and Tenant may remove the Tenant Improvements without their replacement or reimbursement to Landlord so long as Tenant repairs any damage caused by the removal.

7.6 *Alterations.* Without the need or requirement of prior approval from the Landlord, Tenant may make all alterations, reductions, or additions to the Leased Premises as Tenant may desire, provided that they do not violate the Access Easement and Restriction Agreement, or any requirements of any Governing Authorities having jurisdiction over the Leased Premises. Without limitation of the foregoing, Tenant may modify the exterior of the Facilities (e.g., store fronts, signs, marquees, etc.) so long as they are in compliance with the Access Easement and Restriction Agreement. Tenant also shall have the right to modify, repair, and replace Tenant's motor fuels and/or self-service car wash facilities in compliance with applicable laws without obtaining Landlord's consent. All alterations, additions, and replacements will be made in a good workmanlike manner without cost to Landlord, and shall be free and clear of mechanics' and materialmen's liens; however, if any lien is filed, Tenant shall either promptly bond or discharge the lien or it may contest the lien in good faith. Tenant also shall have the right to remove (without the obligation to replace or the obligation to reimburse Landlord for) any trees, dirt, vegetation, landscaping, sidewalks, and curbing on or around the Leased Premises, subject to Tenant's compliance with law and the above requirements.

7.7 *Signs and Trademarks.* Tenant shall have the right to erect or attach upon any part of the Leased Premises all signs, sign faces, posters, banners, and trademark items as it may deem proper, subject to first obtaining any required approvals of the Governing Authorities. All On-Site Signage including any signs, sign faces, posters, banners, and trademark items may be removed by Tenant at the expiration or termination of this Lease at Tenant's sole expense. Landlord shall cooperate with Tenant, at no out-of-pocket cost to Landlord, in obtaining any necessary permits or variances from governmental restrictions placed upon the use of signs.

7.8 *Tank Removal; Remediation; Environmental Indemnification.*

7.8.1 *Tank Removal.* Tenant, at no expense to Landlord, shall remove the USTs at the Leased Premises within 30 days of the expiration or termination of this Lease, and Tenant shall comply with the underground storage tank closure requirements of the

Environmental Agency. Tenant shall provide Landlord with advance notice of their removal, and Landlord shall be permitted to have a representative present to observe the tank and line removal. Any observation by Landlord shall be performed in a manner so as to avoid interference with Tenant's work and at no cost to Tenant. Upon completion of the underground storage tank closure requirements, to the extent affected by the performance of the Corrective Action, Tenant shall backfill any excavation with compaction grade (Type II) gravel.

7.8.2 *Baseline Report.* The tank closure report and any other assessment of the Leased Premises required by the Environmental Agency shall be deemed the "**Baseline Report**" for the Leased Premises, and shall be dispositive of the presence and levels of soil and/or groundwater contamination caused by Tenant's use of the Leased Premises ("**Covered Contamination**"). Tenant also may, at its option, perform further investigation of the Leased Premises, which investigation shall be deemed part of the Baseline Report.

7.8.3 *Corrective Action.* Tenant, at no expense to Landlord, shall perform Corrective Action of Covered Contamination, if any, in accordance with Agency Standards and in accordance with the standards set forth in Section 7.4.

7.8.4 *New Contamination.* Any environmental contamination that: (i) is discovered on, at, under or migrating to the Leased Premises after the expiration or termination of the Lease that is not disclosed in the Baseline Report; or (ii) occurs on, at, or under the Leased Premises after the expiration or termination of the Lease, or is caused by third parties, is referred to as "**New Contamination.**" Tenant shall have no liability for New Contamination, and if any New Contamination becomes commingled with Covered Contamination, Landlord will pay (or reimburse Tenant for) the incremental cost of Corrective Action resulting from the New Contamination.

7.8.5 *Right of Entry.* In consideration for Tenant's undertaking in this Section, Landlord grants to Tenant, without charge, the right to enter the Leased Premises from time to time after the expiration or termination of the Lease, to the extent necessary to perform Corrective Action, including without limitation, the right to drill, trench, install wells, test, monitor, install, operate, and maintain above-ground and below-ground equipment, remove or close in place any wells, remove Tenant's equipment and repair and restore the Leased Premises following completion of Corrective Action. Landlord agrees to cooperate with Tenant so as to minimize the time and expense to Tenant of performing these activities, including the grant of access to on-site utilities (e.g., electrical, sewer, water) at Tenant's expense, if required for the Corrective Action. Tenant agrees to cooperate with Landlord and any future tenant upon the Leased Premises so as not to materially disrupt operations at the Leased Premises, but Tenant shall have no liability for any disruption unless resulting from Tenant's gross negligence or intentional misconduct.

7.8.6 *Fee.* Notwithstanding anything herein to the contrary, if Corrective Action is ongoing at the end of the Lease Term or is required after the expiration or termination of the Lease as a result of the discovery of Covered Contamination during tank removal, and if Tenant's Corrective Action materially disrupts the use of the Leased Premises or prevents Landlord from reletting a portion of the Leased Premises, then Tenant

shall reimburse Landlord its out of pocket expenses and lost rental income, to the extent it can be documented, for the period of such interruption. Notwithstanding the foregoing, Landlord and Tenant agree that the presence of monitoring wells and/or above-ground remediation equipment occupying less than 1% of the square footage of the Leased Premises will not constitute a material disruption of Landlord's use of the Leased Premises, and will not require payment of any fee, rent or other compensation. Tenant's entry upon the Leased Premises for the purpose of monitoring, sampling, or maintaining monitoring wells and/or remediation equipment shall similarly not be deemed a material disruption of Landlord's use of the Leased Premises, so long as the entry is made no more frequently than on a monthly basis.

7.8.7 *Tenant's Indemnity.* In addition to any other indemnities between Landlord and Tenant, Tenant shall indemnify, defend, and hold harmless Landlord from any third party claims due to the presence of Covered Contamination on, at, or under the Leased Premises as a result of the acts or omissions of Tenant, or its agents, contractors, or employees during the Lease Term or during Tenant's presence on the Leased Premises for the performance of the Corrective Action. Amounts payable by Tenant under this indemnity shall be reduced by the comparative negligence or intentional misconduct (if any) of Landlord. This indemnity shall survive until Tenant's completion of Corrective Action at the Leased Premises, even if the period extends beyond the term of any other indemnity from Tenant to Landlord.

7.8.8 *Landlord's Indemnity.* In addition to any other indemnities between Landlord and Tenant, Landlord shall indemnify, defend, and hold harmless Tenant for, from, and against any third party claims due to the presence of New Contamination on, at, or under the Leased Premises after the Lease Term or due to interference with Tenant's performance of Corrective Action by Landlord or Landlord's Permittees. Amounts payable by Landlord under this indemnity shall be reduced by the comparative negligence or intentional misconduct (if any) of Tenant.

7.8.9 *Disclosure.* Landlord shall disclose the provisions of this Section to any subsequent tenant or owner of the Leased Premises, for so long as Tenant's correction obligations under this Lease continue.

7.8.10 *Survival.* The covenants and obligations of Landlord and Tenant under this Section, which by their nature require performance or observance after the expiration or termination of the Lease, shall survive the expiration or termination.

7.8.11 *Disclaimer.* Nothing in this Lease shall be construed: (i) as an admission by Tenant that it is liable for any contamination found or existing at the Leased Premises; or (ii) to relieve, or to constitute a waiver of any of the rights or remedies Tenant may have against Landlord, any predecessor or successor to Tenant's interest under the Lease or in the Leased Premises, or any third party from its obligations for removal or remediation of any contamination of the Leased Premises not caused by Tenant.

7.9 ***Surrender.*** Upon expiration of the Lease Term (or upon earlier termination for any reason), Tenant shall quit and surrender the Leased Premises. At Tenant's option, Tenant may

remove the Facilities constructed by Tenant, and all of Tenant's Improvements, subject to Tenant's obligations in the preceding Section.

8. Restrictive Use Covenants on Landlord's Properties.

8.1 **Convenience Store Restrictions.** Landlord, on behalf of all Landlord Parties, expressly covenants and agrees that, during the Lease Term (including any extension or renewal), the Landlord Parties will not permit any lands within a radius of one mile of the property line of the Leased Premises that are now owned or that may be acquired during the Lease Term by the Landlord Parties or by an entity in which the Landlord Parties own any interest or exercise any control directly or indirectly (the "**Restricted Area**") to be used for the operation of: (i) a Convenience Store (defined below), (ii) a Motor Fuels Facility (defined below), or (iii) a car wash (collectively, the "**Prohibited Uses**"). The Access Easement and Restriction Agreement shall further provide that the Remainder Property shall be restricted from use against the Prohibited Uses and restricted from selling the Restricted Items (subject to Sections 8.2.2 and 8.3.2 below). Notwithstanding anything contained herein to the contrary, the foregoing restrictions shall not apply to: (i) any property owned by Landlord and currently operating any Prohibited Use as of the Effective Date or (ii) to any property owned by an unaffiliated successor landlord and being operated for any Prohibited Use as of the date of assignment of this Lease to such successor landlord.

8.1.1 *Definition of Convenience Store.* The term "**Convenience Store**" means a retail store selling, renting or providing merchandise and/or services customarily sold, rented or provided from time to time at stores operated or franchised by Tenant within the State of New Mexico, and including by way of example, but not limited to, merchandise and/or services customarily sold, rented or provided from time to time at stores such as a Cumberland Farms, 7-Eleven, Stop N Shop, On the Run, High's, Store 24, WaWa, and Kwik Stop, and other regional or "mom and pop" convenience stores or businesses.

8.1.2 *Definition of Motor Fuels Facility.* The term "**Motor Fuels Facility**" means a full-service and/or self-service facility which provides for the retail sale and dispensing of gasoline, other petroleum products, or other common methods of propelling vehicles.

8.2 **Product Restrictions.** Landlord, on behalf of all Landlord Parties, expressly covenants and agrees that, during the Lease Term, no part of the Restricted Area will be used in violation of the following covenants:

8.2.1 *Restricted Products.* Without Tenant's prior written consent, no store other than the Leased Premises shall be permitted to sell any of the following products (the "**Restricted Items**"):

- (a) tobacco products, electronic cigarettes, or other nicotine delivery devices or products;

(b) beer, wine or other alcoholic beverages for off-premise consumption; and

(c) lottery tickets.

8.2.2 *Exceptions to Restricted Item Sales.* The Landlord Parties may permit Restricted Items to be sold in the Restricted Area if: (i) the store has a floor area of 15,000 square feet or more; or (ii) the Restricted Items are being sold at stores as of the execution date of this Lease (in which case Landlord agrees not to allow the sale of Restricted Items by any new tenant or occupant of the store after the current occupant has vacated); (iii) sales of Restricted Items at any store are incidental to an otherwise permitted use; (iv) sales of tobacco products, electric cigarettes, or other nicotine delivery devices or products incidental to the operation of a bar, lounge, or full-service restaurant, (v) sales of beer, wine or other alcohol beverages incidental to the operation of a bar, lounge, or full-service restaurant, and (vi) the operation of a brewery. For purposes of this Section, sales shall be incidental if the total sales of Restricted Items are less than 5% of the total annual sales at the store.

8.2.3 *Tenant Consent.* Whenever the prior written consent is required of Tenant for purposes of this Section 8.2, the consent will not be unreasonably withheld or delayed.

8.3 *Restrictions against the Remainder Property.* The Access Easement and Restriction Agreement shall provide that, during the Lease Term (including any extension or renewal), the Remainder Property shall not be used for the operation of: (i) a Convenience Store, or (ii) a Motor Fuels Facility (collectively, the “**Remainder Property Prohibited Uses**”).

8.3.1 *Product Restrictions against the Remainder Property.* The Access Easement and Restriction Agreement shall provide that no store on the Remainder Property shall be permitted to sell any of the following products (the “**Restricted Items**”):

(a) tobacco products, electronic cigarettes, or other nicotine delivery devices or products;

(b) beer, wine or other alcoholic beverages for off-premise consumption; and

(c) lottery tickets.

8.3.2 *Exceptions to Restricted Item Sales on the Remainder Property.* Notwithstanding anything contained herein to the contrary, the Remainder Property may be used for the sale of beer and any and all products that may be produced by a so-called brewery or brew pub, including, but not limited to, beer, or other alcoholic beverages (brewed or distilled) for on or off premises consumption; for example, and not by way of limitation, the Remainder Property may be sold or leased to Marble Brewery, Rio Bravo

Brewing Company, Ponderosa Brewing Company, Boxing Bear Brewing Company, Santa Fe Brewing Company, and similar entities.

8.4 **Compliance; Enforcement.** Landlord shall not enter into any lease in violation of the above restrictions, and shall promptly take all necessary action to stop any and all violations. Landlord grants Tenant the right to institute an action, including an action for damages or injunctive relief, in the name of Landlord if necessary, against any business that is operating in violation of this Section; however, the exercise of that right by Tenant does not waive any rights Tenant may have against Landlord. The cost of an action instituted by Tenant shall be borne by Tenant unless Landlord fails to comply with its obligations set forth in this Section 8.3, in which case such costs shall be borne by Landlord.

9. Maintenance; Operating Expenses.

9.1 **Repairs.** Tenant, at its sole cost and expense, shall maintain, repair and replace, if necessary, the Leased Premises, including the Facilities, the Tenant Improvements, and all improvements thereon, including without limitation, structural systems, motor fuels and self-service car wash facilities, roof, load-bearing walls, floor slabs, HVAC system and equipment, utility systems such as lighting and plumbing, storm drainage systems, windows, glass, doors, glazing and floor coverings, parking areas, landscaped and irrigation areas, sidewalks, driveways, signage as well as all other facilities, trade fixtures and other equipment located on the Leased Premises. Tenant shall not be obligated to repair or restore any deterioration, damage or destruction of all or any part of the Leased Premises that is due to ordinary wear and tear, fire, earthquake, acts of the enemy, the elements, unavoidable casualties or matters similar or dissimilar beyond Tenant's reasonable control; provided, however, that this Lease shall continue in full force and effect and Base Rent under this Lease shall not abate except to the extent expressly provided in Section 10 of this Lease.

9.2 **Utilities.** Tenant shall pay all charges for gas, electricity, telephone, sewer, water, and any other utilities used by Tenant on the Leased Premises. Tenant shall be solely responsible for the performance of any and all maintenance and repair to the utilities serving the Leased Premises. Tenant will be responsible for assuring that all billing statements for all utilities will be mailed directly to Tenant for payment. If Landlord receives utility billing statements, Landlord shall immediately forward the bill to Tenant for payment.

9.3 **Triple Net Lease.** Except as otherwise expressly provided in this Lease, this Lease is intended to be and shall be deemed and construed as a "net lease," pursuant to which Landlord shall receive the Base Rent without reduction or offset for any other charge or expense, and free and clear of all taxes, impositions, charges or expenses of any nature whatsoever. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder, except as otherwise expressly set forth in this Lease.

10. Casualty and Condemnation.

10.1 *Casualty and Other Causes.*

10.1.1 If, during the last two years of the Lease Term: (i) Tenant's business activities on, access to or use of the Leased Premises are substantially disrupted, impaired, or hindered for any reason beyond Tenant's reasonable control for more than 90 days; (ii) construction, operation, or maintenance of a convenience store upon the Leased Premises, or the sale of motor fuel or other common methods of propelling motor vehicles, or the parking of motor vehicles on the Leased Premises, is prohibited, restricted, or substantially impaired (so as to make such activity commercially impractical or economically unfeasible in Tenant's reasonable judgment) by any law, ordinance, regulation, permit revocation or action or order of any Governing Authority (and not by any act or omission of Tenant); (iii) the Leased Premises, in part or in whole, is damaged or destroyed by fire, earthquake, or other casualty so as to become untenable in Tenant's reasonable judgment, and to require substantial reconstruction; or (iv) the Leased Premises, in substantial part or in whole, shall be damaged or destroyed by fire, earthquake or other casualty during the last two years of the Lease Term, then, in those instances (each called a "**Casualty Loss**"), Tenant shall have the right (but not the obligation) to terminate this Lease, and vacate and surrender the Leased Premises to Landlord as soon as reasonably possible, not to exceed 180 days; however, Tenant's right to enter the Leased Premises to satisfy its remediation and other outstanding obligations under this Lease shall not be disturbed. Tenant shall notify Landlord in writing of its election to terminate within 30 days from the date of loss. If a termination following a Casualty Loss occurs, Landlord shall be entitled to the insurance proceeds, including any applicable deductible or self-insured retention maintained by Tenant ("**Proceeds**"), relating only to the value of the Facilities. If Tenant does not elect to terminate this Lease following a Casualty Loss occurring during the final two years of the Lease Term, Base Rent and Additional Rent shall abate or be adjusted as of the date of loss, to the extent the Leased Premises are impaired or not usable by Tenant for their intended purpose, and Tenant shall use the Proceeds to promptly repair, restore, or reconstruct the damaged or destroyed Facilities to equal or better condition than existing prior to the loss. Landlord shall have no obligation to replace any of Tenant's Improvements. The abatement of Base Rent and Additional Rent shall cease upon the completion of repairs by Tenant. Damage or destruction of the Leased Premises shall not terminate this Lease except as provided above, any present or future law to the contrary notwithstanding.

10.1.2 If a Casualty Loss occurs with more than two years remaining on the Lease Term, the Lease shall remain in full force and effect, Tenant shall either (i) promptly remove all Facilities and Tenant Improvements and restore the Leased Premises to substantially the same condition as existed as of the Delivery Date ("**Removal**"), or (ii) use the Proceeds to promptly repair, restore, or reconstruct the damages or destroyed Facilities to equal or better condition than existing prior to the Casualty Loss ("**Repair**"). In the event Tenant elects to perform the Repair, Base Rent and Additional Rent shall abate or be adjusted as of the date of loss, to the extent the Leased Premises are impaired or not usable

by Tenant for their intended purpose, and such abatement of shall cease upon the completion of the Repair. In the event Tenant elects to perform the Removal, there shall be no abatement of Base Rent and Additional Rent, and the Lease shall continue in full force and effect.

10.2 *Notice of Appropriation.* If, prior to or during the Lease Term, either Landlord or Tenant receives notice of or otherwise becomes aware of a pending or possible condemnation that may materially and adversely affect the Leased Premises, pursuant to the exercise or threat of eminent domain (an “**Appropriation**”), the receiving party shall promptly deliver written notice of the Appropriation to the other party. An Appropriation shall be deemed to have occurred, notwithstanding Section 10.1(i) above, if either Landlord or Tenant receives notice from any Governing Authority that Tenant’s access to the Leased Premises will be permanently or temporarily affected, by any major roadway improvements (including installation of mass transit lines) in the vicinity of the Leased Premises planned to take more than 120 days to complete.

10.3 *Termination on Appropriation.* If an Appropriation occurs, the rights and obligations of Landlord and Tenant in the event of an Appropriation shall be as follows:

10.3.1 *Total Taking.* If the entire Leased Premises is subject to an Appropriation, this Lease shall terminate on the date possession is required to be delivered to the appropriating authority (the “**Surrender Date**”).

10.3.2 *Partial Taking.* If less than the entire Leased Premises is subject to an Appropriation, and Tenant reasonably determines in good faith that the Leased Premises (including parking) remaining following the Appropriation is inadequate for its business purposes, Tenant shall have the right, but not the obligation, to terminate this Lease. In making its determination under this Section, Tenant shall calculate whether the portion of the Leased Premises remaining after the Appropriation and after restoration (as provided below) is inadequate or incapable of producing a proportionately fair and reasonable net annual income, taking into consideration the payment of all operating expenses and debt service related to the Leased Premises, including without limitation the Base Rent, Additional Rent and all other charges required to be paid by Tenant under this Lease, as adjusted below. The determination of “**fair and reasonable net annual income**” shall be governed by reference to the average net annual income produced by the Leased Premises during the three-year period immediately preceding the Appropriation. Tenant shall notify Landlord whether it has elected to terminate the Lease following a partial Appropriation on or before the 180th day after Tenant receives written notice of the Appropriation (the “**Election Date**”). Notwithstanding such termination, Tenant shall have the right, but not the obligation to remain in possession of the Leased Premises from month to month upon all of the other terms and conditions contained in this Lease from the Election Date until the date possession is required to be delivered to the appropriating authority.

10.3.3 *Other Appropriation.* If: (i) access to the Leased Premises is materially reduced and/or obstructed by an Appropriation; or (ii) the Appropriation otherwise materially and adversely interferes with Tenant’s ability to conduct its normal day-to-day business operations at Leased Premises, Tenant shall have the right, but not the obligation to terminate this Lease. Notwithstanding the foregoing, if the reduction and/or obstruction

of access or interference with operations is the result of temporary construction or other temporary taking (including those temporary takings described in Section 10.2 above) (called a “**Temporary Taking**”) in favor of the appropriating authority and the Temporary Taking lasts for 120 days or less, Tenant shall not have the right to terminate the Lease, but Tenant shall have the right to seek compensation from the appropriating authority as provided below, regardless of the duration of the Temporary Taking. Tenant shall notify Landlord whether it has elected to terminate the Lease following an Appropriation under this Section at any time within 180 days after the reduction and/or obstruction in access or interference with operations. Tenant’s notice shall set forth the termination date of the Lease, which shall be not less than 30 nor more than 90 days after the date of such notice.

10.3.4 *Unearned Rent.* Landlord shall immediately reimburse to Tenant all Base Rent, Additional Rent and any other advance payments made by Tenant, prorated to the date of termination under this Section 10.3.

10.3.5 *Award.* If Tenant terminates this Lease because of a Appropriation in accordance with this Article 10.3, then, upon such termination, Tenant will: (i) remit to Landlord all compensation paid as a result of such Appropriation that is allocable to the taken or conveyed parts of the Leased Premises; and (ii) retain all compensation paid as a result of such Appropriation that is allocable to the taken or conveyed parts of the Facilities and the Tenant Improvements (or portion thereof), Tenant’s leasehold interest, trade fixtures, equipment and personal property (if any).

10.3.6 *Occupancy Agreement.* No termination of the Lease by Tenant shall prohibit Tenant from attempting to negotiate a short-term lease or other occupancy agreement with the appropriating authority.

10.4 *No Termination on Appropriation.* If, following an Appropriation under Section 10.3.2 or 10.3.3 above, Tenant does not elect to terminate the Lease, then the following provisions shall apply:

10.4.1 *Restoration Following Appropriation.* When the appropriating authority vacates or the Appropriation otherwise ends, Tenant, at no cost or expense to Landlord, shall proceed as soon as reasonably possible to make all repairs and alterations to the Leased Premises as are necessary to restore the remaining Leased Premises (or, if applicable, access to the Leased Premises) to a condition as comparable as reasonably practicable to that existing at the time of the Appropriation. Notwithstanding the terms of this Section 10.4.1 to the contrary, Tenant’s obligations to repair/restore the Leased Premises shall be conditioned upon Landlord’s delivery to Tenant of all compensation Landlord is entitled to receive from the appropriating authority in connection with the Appropriation of the Tenant Improvements and Facilities (or portion of the Tenant Improvements and/or Facilities included in the Appropriation, if the entire Premises is not taken); the value of any trade fixtures, equipment and personal property (if any) included in a Appropriation as determined by Landlord and Tenant or as set forth in a separate award by the condemning authority; and relocation benefits (if any), it being agreed that all other compensation paid as a result of the Appropriation shall belong to Landlord. In the event Landlord fails to deliver such amounts to Tenant within thirty (30) days following the

award, Tenant shall have the right to terminate this Lease upon 30 days written notice to Landlord.

10.4.2 *Lease Modification Following Appropriation.* Base Rent, Additional Rent and other obligations of Tenant under this Lease shall be abated or adjusted on an equitable basis from the date of the Appropriation, taking into account the number of days that the Appropriation continues, the portion of the Leased Premises affected by the Appropriation, and the degree of interference with Tenant's operations. If Landlord and Tenant fail to promptly agree upon an abatement or adjustment (and, in any case, no later than 60 days of the date Tenant completes restoration), Landlord or Tenant may elect to submit the matter to alternative dispute resolution, as established below. During the pendency of the alternative dispute resolution or until an equitable adjustment or abatement is agreed to by Landlord and Tenant, Tenant shall make payments of Base Rent, Additional Rent, and other obligations based on Tenant's reasonable estimate of the required abatement or adjustment. When a final abatement or adjustment is agreed to or determined by arbitration, any excess amounts paid by Tenant will be credited to the next rental payments and any shortages will be promptly paid by Tenant. No reduction in Base Rent, Additional Rent, or other obligations of Tenant under this Lease shall deprive Tenant of its rights under Section 10.4.

10.5 ***Compensation.*** If an Appropriation occurs, the rights and obligations of Landlord and Tenant in and to any monetary compensation shall be as follows:

10.5.1 *Award.* Landlord and Tenant shall each have the right to claim and receive from the appropriating authority compensation for their respective interests arising out of the Appropriation as accorded by applicable law and the Lease. Tenant shall be entitled to participate in any award made with respect to any Appropriation that affects the Leased Premises, specifically including without limitation compensation for Tenant's leasehold interest. Tenant shall further have the right to claim and receive from the appropriating authority compensation for Tenant's moving and relocation expenses, if applicable, and Tenant's Improvements and personal property, damage to Tenant's business and goodwill, as well as the bonus value of the Lease.

10.5.2 *Consent; Notice; Participation.* Tenant's written consent shall be required for the compromise or settlement of any action prior to or after the Appropriation. Landlord shall provide to Tenant copies of all documents and correspondence with regard to the Appropriation and the Appropriation proceedings and shall give prior notice to Tenant of any meetings with the appropriating authority or its agents and permit Tenant to attend same.

10.5.3 *Statutory Interest.* Landlord and Tenant shall be entitled to receive their percentage of statutory interest from the appropriating authority's deposit with the court for an Appropriation. The respective percentage shall be determined by the appropriating authority's appraisal used to establish the deposit.

11. Insurance.

11.1 **Liability Insurance Coverage.** During the Lease Term, Tenant shall maintain and carry, at Tenant's sole cost and expense, commercial general liability insurance coverage with respect to the Leased Premises and the activities contemplated under the Access Easement and Restriction Agreement with coverage of one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) aggregate, showing Landlord as an additional insured as its interests appear. In the event that any insurance requirements set forth in the Access Easement and Restriction Agreement conflict with the terms of this Article 11, this Article 11 shall control and Tenant's compliance with the requirements of this Article 11 will be deemed in compliance with the Access Easement and Restriction Agreement .

11.2 **Property Insurance Coverage.** During the Lease Term, Tenant shall maintain special form property insurance coverage for the full replacement cost of the Facilities and Tenant's Improvements, showing Landlord as an additional insured to the Facilities, as its interests appear.

11.3 **Additional Insurance Requirements.** Tenant will provide to Landlord a certificate from Tenant's insurer evidencing the coverage required under this Lease. All policies shall be written by carriers licensed to conduct business in the state in which the Leased Premises are located, and no policy shall be subject to cancellation without 10 days' prior written notice being given to Landlord.

11.4 **Self-Insurance.** Tenant, due to the large number of locations that it occupies, may self-insure and/or assume the risk of loss and liabilities on many risks, either through deductibles or straight self-insurance (collectively, "**self-insurance**"), provided Tenant has a net worth in excess of \$100,000,000.00 as reflected in its most recent financial statement that Tenant shall provide to Landlord annually upon request and which Landlord shall treat as confidential in accordance with Section 15.10 below. So long as such self-insurance is maintained in a manner customary for similar locations in Tenant's program of risk management, Landlord agrees that Tenant may be a self-insurer. If a covered loss occurs, Tenant shall pay the amount of any deductible or self-insured retention to the party or parties entitled thereto.

11.5 **Waiver of Subrogation.** Landlord and Tenant mutually waive, as against one another, all rights of recovery for damage sustained by either caused by the other to the extent that the damage is compensated for by insurance maintained by the damaged party, and Landlord and Tenant agree that no party shall have any claim against the other by way of subrogation or assignment. Landlord and Tenant, to the extent possible, shall obtain policy provisions from their insurers allowing for this waiver.

12. Indemnity.

12.1 **Tenant's Indemnity.** During the Lease Term, Tenant shall indemnify, defend, and hold harmless Landlord for, from, and against any third-party loss, claim, or damage, arising in whole or in part from any damage or injury caused by the use of the Leased Premises by Tenant or Tenant's Permittees, except to the extent the loss, claim, or damage resulted from: (i) conditions existing on the Leased Premises prior to the Commencement Date (unless caused by Tenant); (ii) acts or omissions of Landlord or Landlord's Permittees; or (iii) the failure of Landlord to perform its obligations under this Lease after a reasonable cure period, as defined in this Lease. This indemnity shall not be limited by the amount of insurance maintained by Tenant, and shall survive the expiration or termination of this Lease until any covered claims are barred by applicable statutes of limitation.

12.2 **Landlord's Indemnity.** Landlord agrees to indemnify, defend, and hold harmless Tenant for, from, and against any claim, loss, or damage arising in whole or in part from: (i) the acts or omissions of Landlord or Landlord's Permittees or the failure of Landlord to perform its obligations under this Lease; and (ii) conditions existing on the Leased Premises prior to the Commencement Date (unless caused by Tenant). This indemnity shall survive the expiration or termination of this Lease until any covered claims are barred by applicable statutes of limitation.

12.3 **Conditions to Indemnity.** If either Landlord or Tenant (the "**Claimant**") identifies any matter to which this indemnity may apply, Claimant shall promptly, and in every case within 30 days of the notice or claim, notify the other party (the "**Investigating Party**") in writing of the matter. The Claimant shall cooperate with the Investigating Party by allowing prompt access to the Leased Premises by the Investigating Party and, its agents, attorneys, and consultants for the purpose of investigating any matter to which this indemnity may apply. The Claimant shall provide the Investigating Party with copies of all non-privileged investigative reports, data, or other information in any form that Claimant, or its consultants, agents, or attorneys may have pertaining to the matter, upon the request of the Investigating Party.

13. Representations & Warranties.

13.1 **Landlord Representations.** As of the Effective Date (except to the extent given as of the Delivery Date) and continuing throughout the Lease Term, Landlord warrants and represents that to its actual knowledge, after due inquiry: (i) Landlord has entered into the Purchase Contract to acquire valid fee title to the Leased Premises, and, upon such acquisition, shall have full power and authority to lease to Tenant in accordance with the terms of this Lease; (ii) upon completion of Landlord's Work, the Leased Premises have access to public roads and access to all utilities; (iii) Landlord shall not, after the Effective Date, approve or make any material changes to the contents of the Access Easement and Restriction Agreement previously approved by Tenant without the prior written consent of Tenant; (iv) there are no leases encumbering the Leased Premises or, if any exist as of the Effective Date, all leases shall be terminated by Landlord no later than the Delivery Date; (v) Landlord has no knowledge of any pending or threatened legal

actions involving the Leased Premises; (vi) as of the Delivery Date, the Leased Premises are free and clear of, and are not subject to, any perfected or pending laborer's, mechanic's or materialman's liens, or any claim, agreement, lien, mortgage, deed of trust, indenture, security agreement, encumbrance, easement, reservation, restriction, judgment or decree which has not been disclosed to Tenant; (vii) Landlord is not a "**Prohibited Person**," as defined in the USA PATRIOT Act, Public Law 107-56; (viii) except as otherwise disclosed in writing to Tenant, Landlord has no knowledge that any Hazardous Materials have been stored or are present upon the Leased Premises; and (ix) if the Leased Premises contain or did contain underground storage tanks, except as disclosed by Landlord to Tenant, there have been no releases or suspected releases of petroleum products upon the Leased Premises. These representations and warranties shall be true and correct when made by Landlord and at all times during the Lease Term.

13.2 **Tenant Representations.** Tenant warrants and represents that to its actual knowledge, after due inquiry: (i) Tenant has full power and authority to lease from Landlord in accordance with the terms of this Lease; (ii) this Lease will not violate any agreement to which Tenant is a party or by which it is bound; and (iii) Tenant is not a Prohibited Person.

13.3 **Prohibited Person.** Prohibited Person shall mean any person, organization, or entity: (i) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (as amended from time to time, the "**Executive Order**"); (ii) owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) with whom a party is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the so-called PATRIOT Act and the Executive Order; (iv) that commits, threatens, conspires to commit, or supports "terrorism" as defined in the Executive Order; (v) that is named as a "specifically designated national" or "blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of the list or is named on any other U.S. or foreign government or regulatory list maintained for the purpose of preventing terrorism, money laundering, or similar activities; (vi) that is covered by any other law, regulation, or executive order relating to the imposition of economic sanctions against any country, region, or individual pursuant to United States law or United Nations resolution; or (vii) that is an affiliate (including any principal, officer, immediate family member, or close associate) of a person or entity described in one or more of clauses (i) through (vi) of this definition of Prohibited Person.

14. **Default and Remedies.**

14.1 **Default by Tenant – Monetary.** If Tenant defaults in the payment of Base Rent, Additional Rent or any other charges due of Tenant under this Lease, or if any insolvency proceedings are filed against Tenant that are not discharged within 60 days of filing, Landlord shall promptly notify Tenant in writing. If Tenant fails to cure the default within 10 days after receipt of such notice, Landlord shall have the right to exercise one of the following remedies:

14.1.1 *Collect Rent – No Termination.* Landlord may continue this Lease in full force and effect, and the Lease will continue in effect as long as Landlord does not terminate Tenant’s right to possession. Landlord also shall have the right to collect Base Rent, Additional Rent or any other charges as they come due. During the period Tenant is in default, Landlord can enter the Leased Premises and relet all, or any part of the Leased Premises, to third parties for Tenant’s account. Reletting can be for a period shorter or longer than the remaining Lease Term. Tenant shall pay to Landlord the Base Rent, Additional Rent or any other charges due under this Lease as the obligation arises, less all compensation Landlord receives from any reletting. After Tenant’s default and for as long as Landlord does not terminate Tenant’s right to possession of the Leased Premises, Tenant’s right to assign or sublet the Leased Premises shall be preserved.

14.1.2 *Landlord Terminates.* Landlord may terminate Tenant’s right to possession of the Leased Premises at any time after Tenant fails to cure a Monetary Default. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Upon Landlord’s written termination, Landlord shall be entitled to recover from Tenant the total amount of unpaid Base Rent, Additional Rent and other charges due as of the termination date, together with agreed upon liquidated damages to be calculated based upon the total Base Rent due for the remainder of the Lease Term or the Base Rent due for six (6) months, whichever is less.

14.2 *Default by Tenant – Non-Monetary.* If Tenant defaults in the performance of any non-monetary term, covenant or condition of this Lease, Landlord shall promptly notify Tenant in writing. If Tenant fails to cure the default within 30 days after receipt of the default notice, or if the default is of a character as to require more than 30 days to cure and Tenant fails to commence to cure within 30 days after receipt of the default notice and thereafter to diligently proceed to cure the default, then, in either event, Landlord may cure the default and Tenant shall promptly reimburse Landlord for any expenses incurred by Landlord. A non-monetary default shall not cause the forfeiture of this Lease or of Tenant’s right of possession.

14.3 *Default by Landlord.*

14.3.1 *Default-General.* If Landlord defaults in the performance of any of the terms, covenants, and conditions of this Lease, Tenant shall promptly notify Landlord in writing. If Landlord fails to cure a default within 30 days after receipt of the notice, or if the default is of a character as to require more than 30 days to cure and Landlord fails to commence to cure within 30 days after receipt of notice and to diligently proceed to cure the default, then, in either event, Tenant may: (i) cure the default and setoff or deduct any expense so incurred by Tenant from the Base Rent, Additional Rent, or any other charges otherwise due; and/or (ii) bring an action against Landlord, at law or in equity, arising out of the breach. Failure of Landlord to pay or reimburse any sums due Tenant under this Lease shall constitute a default by Landlord.

14.3.2 *Default-Specific.* The remedies upon default described in Section 14.3.1 above will apply where a specific remedy for a breach or default has not been otherwise established in the Lease.

14.4 **No Continuous Operation.** Notwithstanding anything to the contrary in this Lease, so long as Tenant has paid and continues to pay on a timely basis all monetary sums required under this Lease and to observe all other obligations of Tenant under this Lease, Tenant shall not be in default if Tenant fails to construct or vacates the Leased Premises, and Tenant shall have no obligation to open for business or to continuously operate the Leased Premises.

14.5 **Limitation of Damages.** Notwithstanding anything in this Lease or any rights otherwise granted pursuant to applicable law to the contrary, if Landlord defaults or is in breach of any of the terms, covenants, and conditions of this Lease to be observed, honored, or performed by Landlord, Tenant shall look solely to the estate and property of Landlord in the Leased Premises and to the proceeds of any applicable insurance maintained by Landlord for the collection of any judgment (or any other judicial procedures requiring the payment of money by Landlord), and no other property or assets of Landlord shall be subject to levy, execution, or other procedures for satisfaction of Tenant's remedies. Further, neither Landlord nor Tenant shall be liable to the other for any consequential, speculative, punitive or exemplary damages of any nature or for any damages for mental or emotional distress or fear of injury or disease.

15. Additional Material Provisions.

15.1 **Assignment & Subletting.** Tenant may sublet all or any part of the Leased Premises, or assign the Lease to any person or entity for any lawful purpose so long as Tenant is not in default of any provision of this Lease beyond any applicable notice and cure period(s) and so long as the subtenant or assignee agrees to be bound by or assume all obligations of the Lease. No subletting or assignment shall relieve Tenant of its obligations under the Lease, and Tenant shall remain primarily liable for the payment of rent and the performance of the terms, covenants and conditions of this Lease. Tenant shall give Landlord written notice within 30 days of any subletting or assignment. Landlord shall have the right to assign, in whole or in part, any or all of its rights, titles or interests in and to this Lease in connection with Landlord's sale or transfer of the Leased Premises and, upon any such assignment, Landlord shall be relieved of all unaccrued liabilities and obligations hereunder to the extent of the interest so assigned provided that such assignee assumes the Lease in writing. Landlord shall give similar written notice of any sale or assignment of its interest in this Lease to Tenant. The notice by either party shall include appropriate documentation evidencing the sale or assignment, including, but not limited to, copy of the recorded deed, copy of the assignment of lease, and a W-9 form (if applicable).

15.2 **Preferential Right to Purchase and Right of First Refusal.** If, during the Lease Term, Landlord receives an offer to either purchase the Sale Parcel, or to lease the Leased Premises for a period of time after Tenant's Lease Term ends, and Landlord desires to accept the offer, Landlord shall give Tenant immediate notice of the offer, setting forth the name and address of the proposed purchaser or lessee, with a full disclosure of all of its terms and conditions. Tenant shall have the exclusive first option to elect to purchase or lease the Leased Premises upon those same terms and conditions as the offer (the "**Right of First Refusal**") for a period of 30 days afterwards. If Tenant either rejects the Right of First Refusal or does exercise its Right of First Refusal within said thirty (30) day period, then Landlord shall be free to sell the Leased Premises to a third party upon the terms and conditions presented to Tenant. No sale, lease, or transfer of title to the Leased

Premises of the type described above shall be binding on Tenant unless and until Landlord fully complies with these requirements. Tenant's rejection of this right in one instance shall not be a waiver of its right as to any subsequent offers. If the Leased Premises are being sold or leased as a part of a larger parcel of property, Tenant's rights under this Lease shall extend only to the purchase or lease of the larger parcel, including the Leased Premises.

15.3 **Notices.** Every notice, demand or request (collectively "**Notice**") required hereunder or by law to be given by either party to the other must be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) for Notices given prior to the Commencement Date, email transmission. A Notice sent in accordance with the foregoing is deemed to be given on the day that such Notice is sent or transmitted, and is deemed to be received on the day such Notice is actually received, on the first attempted delivery or acceptance of delivery is refused, as applicable. Every Notice must be sent, delivered, or emailed (but only if sent prior to the Commencement Date), as applicable, to the intended addressee at the primary address set forth in the Specific Provisions, or to such other address or to the attention of such other Person as the addressee shall have designated by written notice sent in accordance herewith. Notices shall also be sent to the "with copy to" addressees set forth in the Specific Provisions, provided, however, that delivery to such addressees alone does not constitute compliance with this Section 15.3.

15.4 **Subordination.** Subject to Tenant's receipt, in substantially the form attached hereto as **Exhibit "F"**, a non-disturbance agreement containing provisions recognizing Tenant's right to quiet possession of the Leased Premises and the other rights, benefits, privileges, and remedies specified in this Lease, Tenant agrees that this Lease shall be subordinate to any deeds of trust, deeds to secure debt, or mortgages that may now exist or in the future, may be placed upon the Leased Premises, to any and all advances made or to be made under them, and to the interest on all obligations secured by the Leased Premises, and to all renewals, replacements, and extensions of them; however, the beneficiary or mortgagee in any deeds or mortgages shall recognize this Lease of Tenant in the event of judicial or non-judicial foreclosure if Tenant has not committed and failed to cure any material default under the terms of this Lease. If any beneficiary makes a written election to have this Lease superior to its deed of trust or mortgage and gives notice of its election to Tenant, then this Lease shall be superior to the lien of any applicable deed of trust or mortgage, whether this Lease is dated before or after the deed of trust or mortgage.

15.5 **Estoppel Certificates.** Landlord or Tenant shall at any time and from time to time, upon not less than 30 days' prior written notice from the other, execute and deliver a statement to the requesting party and their designee (i.e., lender, potential purchaser, subtenant, etc.) in writing, in a form reasonably acceptable to the other, certifying to the other that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease has been modified and is in full force and effect as so modified), and the dates to which any Base Rent or Additional Rent and any other charges or payments have been paid in advance, and any other factual items reasonably requested that do not modify this Lease or increase Tenant's obligations or liabilities under this Lease. Any statement delivered pursuant to the prior sentence may be relied upon by the requesting party.

15.6 **Title Insurance.** Effective as of the Commencement Date, Tenant may obtain from Escrow Agent, at Tenant's expense, a standard ALTA or similar leasehold title insurance policy from Escrow Agent (or another affiliated company acceptable to Tenant with zoning, survey and specific access endorsements), insuring Tenant's leasehold interest against disturbance, in an amount equivalent to the undiscounted sum of all Base Rent payments to be made during the Primary Term. Landlord shall cooperate with all reasonable requirements of the Escrow Agent to issue such insurance policy; provided, however, that such cooperation shall come at no out-of-pocket cost to Landlord.

15.7 **Memorandum of Lease.** At the same time as the execution and delivery of the Commencement Date Certificate, Landlord and Tenant shall execute and deliver to Escrow Agent for recording in the land records of the county where the Leased Premises is located, and at Tenant's cost, a Memorandum of Lease in substantially the form attached hereto as **Exhibit "G"**, indicating the existence of the Lease with respect to the Leased Premises, the Restricted Area, the existence of Tenant's preferential right to purchase or lease, and other matters reasonably required by Tenant to protect its interests under this Lease. This Lease shall not be recorded.

15.8 **Quiet Enjoyment; Inspection.** So long as Tenant has not committed and failed to cure any material default under the terms and conditions of this Lease, Tenant may peaceably and quietly enjoy the Leased Premises during the Lease Term. Landlord shall have the right to enter the Leased Premises from time to time at reasonable times and with reasonable advance notice (except in the case of an emergency) to conduct non-invasive inspections of the Leased Premises. In addition, Landlord shall have the right to enter the Leased Premises at reasonable times and with reasonable advance notice during the last six (6) months of the Lease Term to post "for sale" or "for lease" signs and to show the Leased Premises to prospective buyers or tenants.

15.9 **Liens.** If any non-consensual lien or encumbrance is filed or placed upon the Leased Premises and the lien or encumbrance is not caused by any act or omission of Tenant and if the lien or encumbrance could result in the termination of Tenant's leasehold interest, Landlord shall promptly commence to satisfy the lien or encumbrance and have it released. If Landlord fails to satisfy and have released the lien or encumbrance, then Tenant shall have the right, in addition to all other remedies available at law or in equity, to satisfy the lien or encumbrance and offset Tenant's future rental obligations by 125% of the amount of the lien or encumbrance plus Tenant's reasonable costs.

15.10 **Confidentiality.** Landlord shall keep all of Tenant's financial statements and any other financial information of Tenant in strictly confidential and will not disclose the same except to its officers or employees who are required to review the same. Landlord shall inform such officers or employees of the confidential nature of the financial statements and information. Landlord agrees to be responsible for any breach of this confidentiality requirement by its officers or employees (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy Tenant may have against such individual with respect to any such breach). Landlord agrees to protect the financial statements and information against unauthorized use or disclosure with the same degree of care as it gives its own proprietary information of a similar nature, but not less than a reasonable degree of care.

15.11 **Consent/Duty to Act Reasonably.** Any time the consent of Landlord or Tenant is required under the Lease, the consent shall not be unreasonably withheld, conditioned or delayed, unless a different standard for review or response is specified in the Lease. Whenever the Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations, or make allocations or other determinations, Landlord and Tenant shall act in a commercially reasonable manner and take no action that might result in the frustration of the reasonable expectations of a sophisticated landlord and sophisticated tenant concerning the benefits to be enjoyed under the Lease. Landlord and Tenant further covenant to take all further actions reasonably requested by the other to effectuate the provisions of this Lease.

16. General Conditions.

16.1 **Brokers.** Landlord and Tenant each warrant and represent to the other that, except for Tenant's Broker who represents Tenant in this transaction they have not had any dealing with any other real estate brokers or agents in connection with the negotiation of this Lease. Commissions or fees owed to Tenant's Broker shall be paid by Landlord in accordance with a separate written agreement. Any other claims for commissions or fees made against any party in connection with this Lease transaction shall be handled and paid by the party whose actions form the basis of the claims, who shall indemnify, defend, and hold harmless the other party, on written demand, for, from, and against all other claims for commissions or fees.

16.2 **Cancellation of Previous Agreements.** This Lease cancels and supersedes, as of the Commencement Date, any lease or other written agreement (including letters of intent) of prior date between the parties or their predecessors in interest on or with reference to the possession of the Leased Premises and covers all the covenants, stipulations, and provisions agreed upon by the parties. No employee, agent, or representative of Tenant has authority to change, modify, or alter the terms of this Lease, except by written instrument executed upon and with the same authority as this Lease, and neither party is or will be bound by any inducement, statement, representation, promise, or agreement not contained in this Lease or as a proper amendment.

16.3 **Binding Effect.** This Lease shall not be binding upon Landlord or Tenant until Landlord and Tenant both shall have executed the Lease.

16.4 **Interpretation.** The language in all parts of this Lease shall be construed according to its normal and usual meaning, and not strictly for or against either Landlord or Tenant. If there is any claim of ambiguity in or dispute regarding the meaning of the language of the Lease, Landlord and Tenant shall be deemed to have jointly drafted this Lease and each provision so that the Lease shall not be construed against either party as the drafter. Prior drafts of this Lease or of any disputed provision shall have no effect in construing this Lease or any provision.

16.5 **Severability.** Landlord and Tenant covenant and agree that, if any term, covenant, condition, provision, or agreement of this Lease is held to be invalid or void by any court of

competent jurisdiction, the invalidity of any term, condition, covenant, provisions, or agreement shall not affect any other term, covenant, condition, provision, or agreement in this Lease.

16.6 ***Singular/Plural.*** Whenever the singular is used in this Lease as required by the context, the reference shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word “**person**” shall include corporation, firm or association.

16.7 ***Headings.*** The marginal headings or titles to the Sections of this Lease are not part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

16.8 ***Entire Agreement & No Oral Modification.*** This instrument, including all attached exhibits, contains all of the agreements and conditions made between the parties to this Lease and may not be modified orally or in any other manner other than by an agreement in writing signed by Landlord and Tenant or their respective successors in interest.

16.9 ***Successors & Assigns.*** Subject to the terms and conditions of Section 15.1 above, the terms and provisions of this Lease shall be binding upon and inure to the benefit the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

16.10 ***No Third Party Beneficiaries.*** Nothing in this Lease, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Lease on any person (including without limitation any broker, finder, or agent of either party) other than the parties to this Lease and their respective successors and assigns, if any, nor shall any provision in this Lease give any third parties the right of subrogation or action against any party to this Lease.

16.11 ***Authority to Execute.*** Landlord and Tenant covenant that each individual executing this Lease by and on behalf of the party is a person duly authorized to execute this Lease for that party and bind the party according to the terms of this Lease.

16.12 ***Force Majeure.*** Neither party shall be required to perform any term, covenant, or condition of this Lease so long as the performance is delayed or prevented by “**Force Majeure Events**” constituting any acts of God, strike, lockout, material or labor shortage or restriction, civil riot, enemy action, war, acts of terrorism, civil commotion, pandemics, epidemics, moratorium, actions of a Governing Authority, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome. Notwithstanding the foregoing, the provisions of the Section shall not be deemed to preclude, excuse, or abate Tenant’s obligations in the payment of Base Rent, Additional Rent or any other charges or obligations under the Lease as those rental obligations become due and payable by Tenant. The occurrence of a Force Majeure Event will extend day-to-day the relevant date in question but only if, within 10 business days after the end of the event causing the delay, the party seeking the delay notices the other party in writing of the nature of the cause for the delay and the actual extension requested. For the avoidance of doubt, the foregoing shall apply to and extend any period of time set forth in this Agreement regarding the Feasibility Period, the Permit Period, and the Construction Period.

16.13 *Attorneys' Fees & Costs.* If legal action arises between Landlord and Tenant to enforce any of the provisions and/or rights under this Lease, the prevailing party shall be entitled to recover its costs and expenses, including attorney's fees, from the other party.

16.14 *Governing Law.* This Lease and all of its provisions shall be construed in accordance with the laws of the state where the Leased Premises are located (the "**Governing Law**").

16.15 *No Waiver.* The waiver by Landlord or Tenant of any violation on the part of the other shall not be construed as a waiver of any subsequent violations.

16.16 *Counterparts.* This Lease and any amendments may be executed in any number of original or telecopy counterparts, each of which will be effective on delivery and all of which together will constitute one binding agreement of the parties. Any signature page of the Lease may be detached from any executed counterpart of the Lease without impairing the legal effect of any signatures and may be attached to another counterpart of the Lease that is identical in form to the document signed (but that has attached to it one or more additional signature pages).


16.17 WAIVER OF JURY TRIAL. LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

16.18 *Calculation of Time Periods.* Should the calculation of any of the various time periods provided for herein result in an obligation becoming due on a day occurring on a Saturday, Sunday or U.S. Federal Reserve Bank holiday, then the due date of such obligation or scheduled time of occurrence of such event shall be delayed until the next business day. For purposes of calculating additional time periods following such due date, any such extended time period shall thereafter be deemed to have expired on the extended due date, and not the due date of original expiration before taking into account the weekend or legal holiday. As used herein, if a day is to be considered a "calendar day" (any day of the week, month or year) unless otherwise specified as a "business day" (the days between and including Monday to Friday and not including public holidays and weekends).

Landlord and Tenant have duly executed this Lease as of the dated established below.

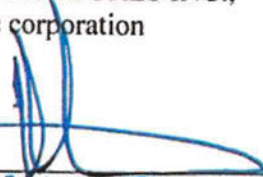
Landlord:

RS GOLF COURSE, LLC,
a Texas limited liability company

By: 
Name: BERNI TUCKER
Title: MANAGER
Date Executed: 8/15/23, 2023

Tenant:

CIRCLE K STORES INC.,
a Texas corporation

By: 
Name: MARK TATE
Title: VP OPERATIONS
Date Executed: 5/19/23, 2023



ESCROW AGENT’S ACCEPTANCE

Escrow Agent hereby: (i) acknowledges receipt of the Lease executed by Landlord and Tenant, (ii) agrees to be bound by the provisions and perform the obligations hereof applicable to Escrow Agent, if any, and (iii) declares that the Effective Date is _____, 2022 (the “**Effective Date**”).

First American Title Insurance Company

By: _____
Name: _____
Title: _____

EXHIBIT "A-1"
TO
GROUND LEASE
(New Facility)

(Legal description and/or depiction of the Land)

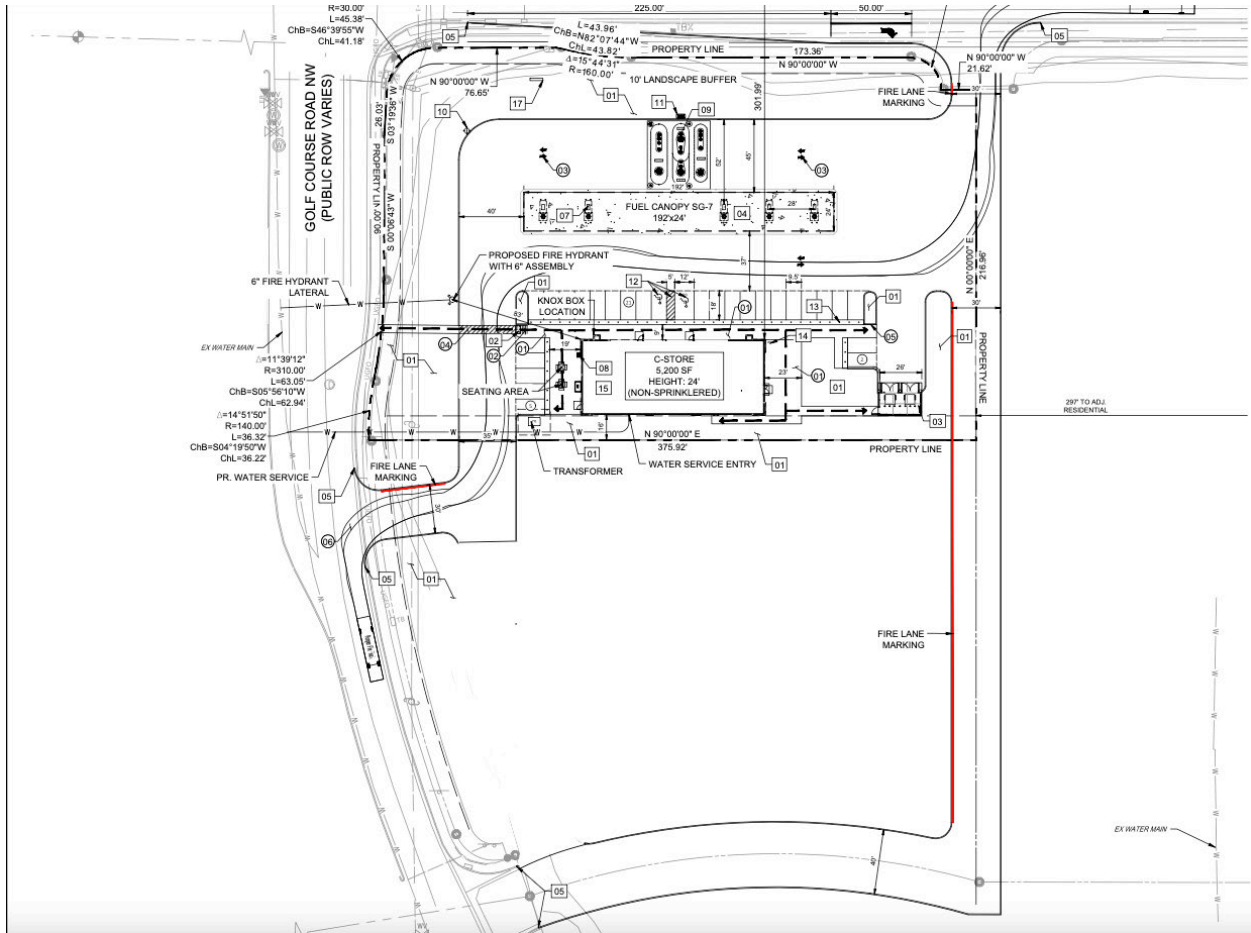
Approximately 87,120 square feet of real property on the hard southeast corner of Westside Blvd. SE and Gold Course Rd SE, Albuquerque, Bernalillo County, New Mexico, out of the following described property, as depicted on the Site Plan:

Tract D-1, Paradise Heights, Unit I, Albuquerque, Bernalillo County, New Mexico, as shown on the Plat of Tracts D-1, E-1 and AMAFCA Black Arroyo Channel ROW, Paradise Heights, Unit I, Albuquerque, New Mexico, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on June 2, 2009, in Plat Book 2009C, Page 83, as Document No. 2009061460.

A-1-1

EXHIBIT "A-2" TO GROUND LEASE (New Facility)

(Site Plan for Leased Premises)



**EXHIBIT "A-3"
TO
GROUND LEASE
(New Facility)**

(Circulation Drive)

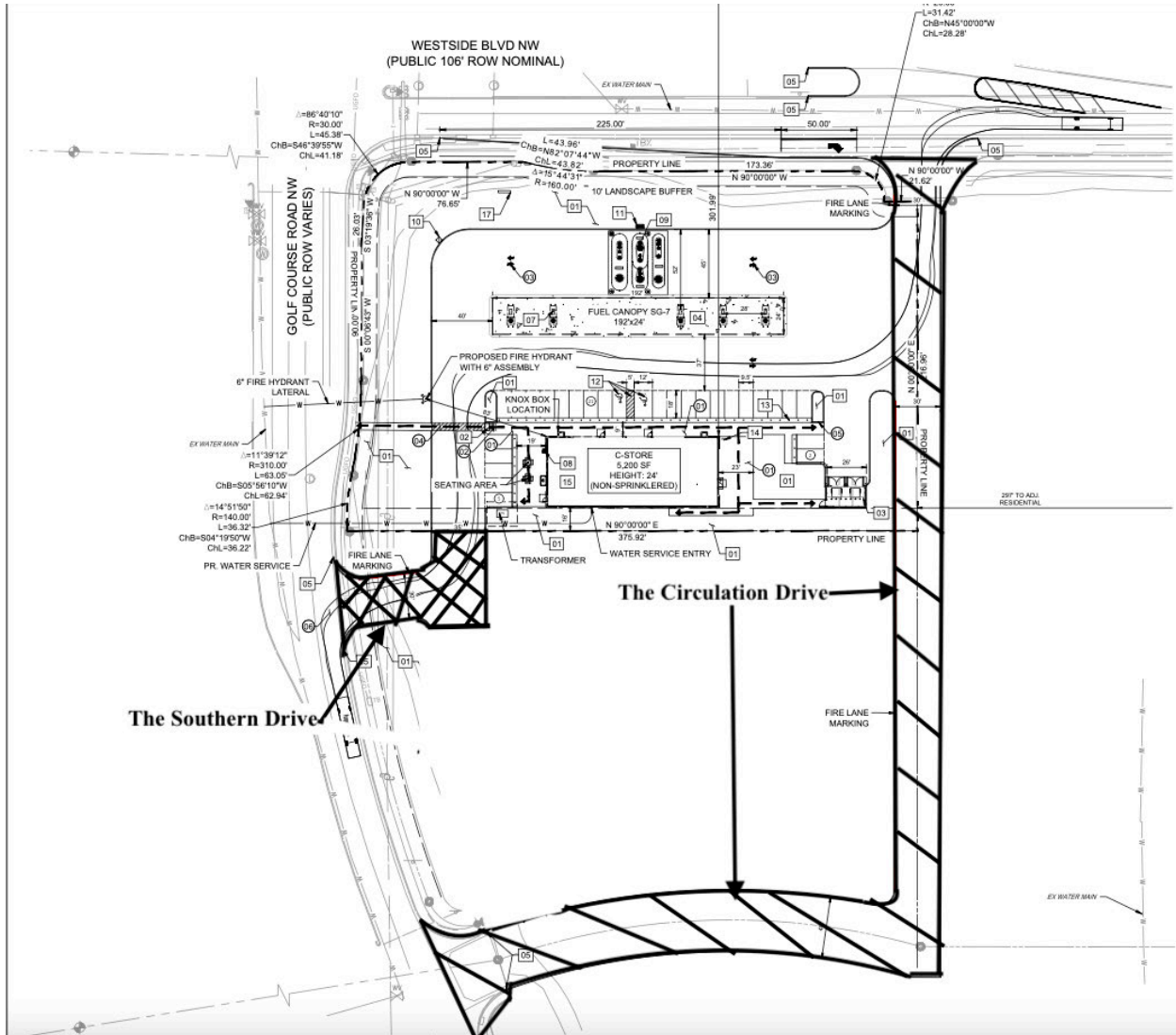
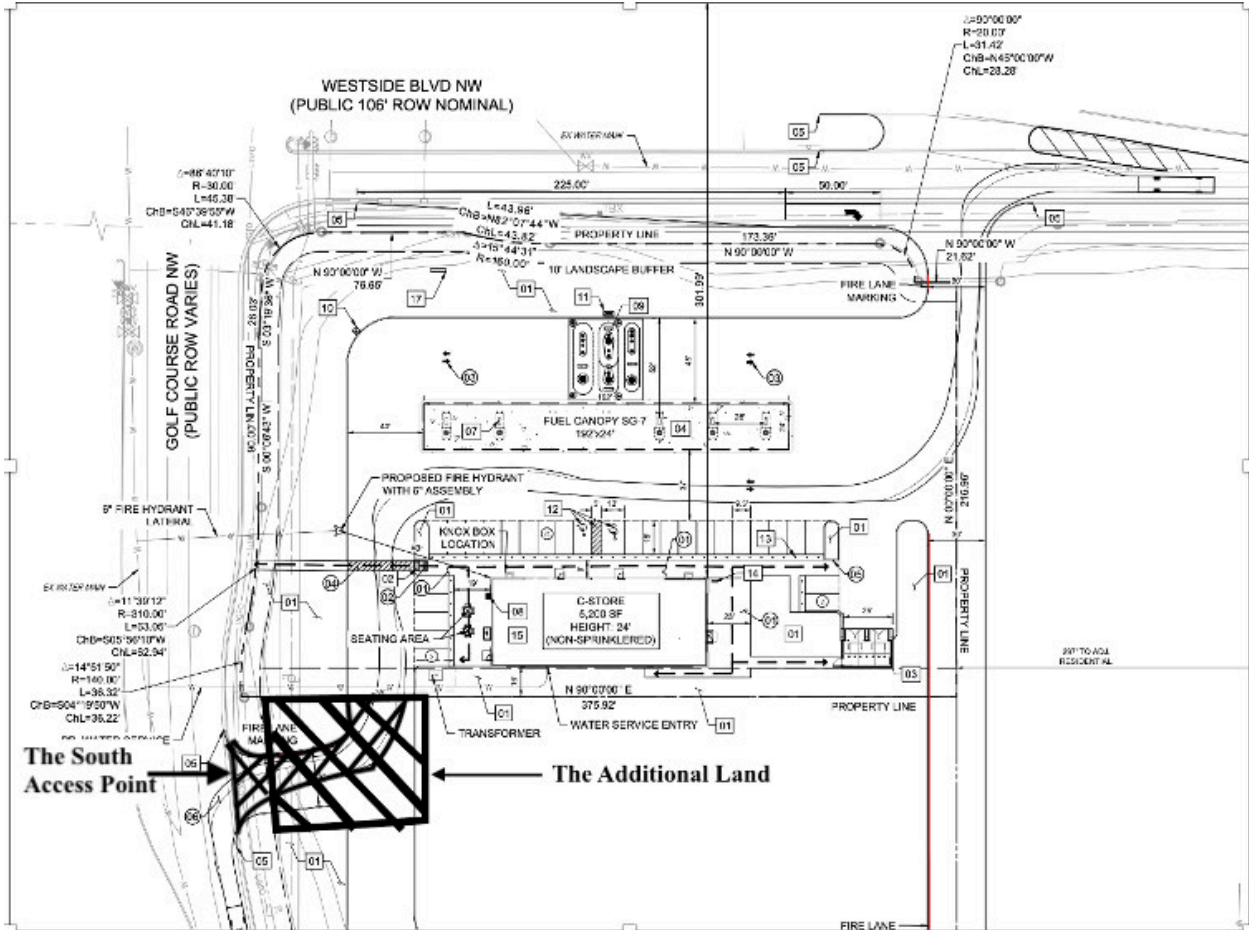


EXHIBIT "A-4"
TO
GROUND LEASE
(New Facility)

The Additional Land



**EXHIBIT "A-5"
TO
GROUND LEASE
(New Facility)**

The Parent Tract

Tract "D-1" of PARADISE HEIGHTS, UNIT 1, Albuquerque, New Mexico, as the same is shown and designated on the Plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on June 2, 2009 in Plat Book 2009C, Page 83.

A-5-1

**EXHIBIT “B”
TO
GROUND LEASE
(New Facility)**

(Intentionally Omitted)

B-1

**EXHIBIT “C”
TO
GROUND LEASE
(New Facility)**

(Existing Contamination)

C-1 **Introduction.** The provisions of this **Exhibit “C”** shall govern the actions of Landlord and Tenant if Existing Contamination is revealed or discovered at the Leased Premises during the term of the Lease. Capitalized terms not defined in this **Exhibit “C”** shall have the meanings established in the Lease.

C-2 **Environmental Obligations.** Landlord, at no cost or expense to Tenant, shall report any Existing Contamination to the Environmental Agency (if required by Agency Standards and not previously reported) and shall promptly conduct Corrective Action in accordance with Agency Standards and the provisions established in the Lease. If Existing Contamination is discovered by Tenant or revealed by Landlord at any time prior to the Commencement Date, Landlord will take all Corrective Action to remediate or remove the Existing Contamination, and the Commencement Date shall be delayed and extended until a date that is 10 days after the Landlord Remediation Completion Date (as defined below). If Landlord is unable or unwilling to take the Corrective Action described in the prior sentence or to cause the Closure Report to be accepted in writing by the Environmental Agency within one year of the later of the discovery or disclosure of the Existing Contamination or the expiration of the Feasibility Period, Tenant will have the right to terminate the Lease by written notice to Landlord, in which case Landlord agrees to reimburse Tenant for all Investigation Costs and costs incurred in the performance of Tenant’s Work. Environmental conditions discovered after the Commencement Date will result in a rent abatement to Tenant to the extent the Corrective Action of Landlord affects the use of the Leased Premises.

C-3 **Assessment and Remediation of Existing Contamination**

C-3.1 **Landlord’s Entry.** Throughout the term of the Lease, Landlord, its agents and contractors shall have the right to enter the Leased Premises from time to time to perform Corrective Action activities on the Existing Contamination, and any entry for this limited purpose shall not be deemed as a violation of Tenant’s right of quiet enjoyment or a trespass upon the Leased Premises. This right of entry shall include the right to drill, trench, install wells, test, monitor, install, operate and maintain above- and below-ground equipment, remove or close in place any wells, remove Landlord’s equipment and repair and restore the Leased Premises following completion of Corrective Action. Tenant agrees to cooperate with Landlord so as to minimize the time and expense to Landlord of performing such activities, including the grant of access to on-site utilities (e.g., electrical, sewer, water) at Landlord’s expense, if required for such Corrective Action.

C-3.2 **Notice; Disruption; Cooperation.** Landlord shall give Tenant at least two business days’ notice of its entry to the Leased Premises for the purposes established in this **Exhibit “C”**. In addition to the notice parties designated in the Lease, notice to Tenant

pursuant to this Section C-3.2 shall be given to Alan Cubberley, Environmental Compliance Manager, by telephone at (330) 634-2102 and by electronic mail to acubberley@circlek.com.

Landlord shall use commercially reasonable efforts to avoid unreasonable disruption of operations at the Leased Premises as a result of its entry, but Landlord shall have no liability for any such disruption, unless resulting from Landlord's negligence, gross negligence or intentional misconduct. The parties shall cooperate in good faith on the location of required wells and/or Corrective Action equipment at the Leased Premises; however, after Tenant has installed its Motor Vehicle Fuel Improvements, no wells, trenches, invasive testing, or underground equipment can be installed by Landlord in the area of the Motor Vehicle Fuel Improvements to perform the Corrective Action without Tenant's written approval of the location, depth, and width of the item.

C-3.3 Closure. When remediation of Existing Contamination is complete under Agency Standards, Landlord shall submit a written report to the Environmental Agency seeking site closure (the "**Closure Report**") and shall notify Tenant of the submission of the Closure Report.

C-3.4 Exchange of Information. Until the Closure Report is accepted in writing by the Environmental Agency (the "**Remediation Completion Date**"), each party shall provide the other with copies of all reports, correspondence or other documents filed with or received from the Environmental Agency relating to any contamination at the Leased Premises.

C-4 Effects of Covered Contamination. If, prior to the Remediation Completion Date, Covered Contamination (i.e., contamination to be corrected by Tenant) occurs or is discovered upon removal of any previous USTs located on the Leased Premises in accordance with the Lease, and if Landlord reasonably determines that the existence of the Covered Contamination will make remediation of Existing Contamination significantly more difficult, expensive or time-consuming, Landlord shall so notify Tenant, and Tenant shall become liable for a pro-rata share of the Corrective Action costs for the commingled Existing Contamination and Covered Contamination.

C-4.1 Tenant's Share. When applicable, Tenant shall promptly pay its share of costs and expenses to Landlord, as work is performed and as invoices for such work, with supporting documentation, are presented to Tenant. Tenant's share of costs and expenses for the work by Landlord in remediating any Existing Contamination shall be determined by dividing the estimated cost to complete remediation prior to Covered Contamination by the estimated cost to complete remediation after the Covered Contamination is removed, and subtracting the quotient from one. As an example, if the estimated cost to complete remediation prior to Covered Contamination is \$60,000 (calculated at the time the Covered Contamination is disclosed or is discovered), and the estimated cost to complete remediation after Covered Contamination is \$90,000, then Tenant's fractional cost equals: $1 - (60,000 \text{ divided by } 90,000)$, or $1 - .667$, which results in Tenant paying one-third (.333) of the Corrective Action costs incurred after the Covered Contamination occurs or is discovered.

C-4.2 ***Transfer of Responsibility.*** Landlord and Tenant may from time to time attempt to agree upon the total remediation cost at the Leased Premises and the transfer of responsibility for the remediation of all contamination to one party. If the parties agree upon the cost and transfer, the transferring party shall pay to the receiving party an amount equal to its share of the total remediation cost and the receiving party shall assume responsibility to complete remediation of all contamination. The receiving party also shall execute and deliver to the transferring party a release of remediation liability and indemnity against claims relating to the transferring party's share of the contamination.

C-4.3 ***Arbitration.*** If the parties cannot in good faith agree upon the allocation of costs to complete remediation, they shall submit the dispute to mediation and arbitration in accordance with the Lease; however, the matter shall be submitted to one arbitrator that is technically qualified and experienced in matters of assessment and remediation of motor vehicle fuel contamination. The cost of the arbitrator shall be paid by the non-prevailing party and the arbitrator's decision shall be final and binding upon the parties.

**EXHIBIT “D”
TO
GROUND LEASE
(New Facility)**

(Delivery Date Agreement)

DELIVERY DATE AGREEMENT

This Delivery Date Agreement (“**Agreement**”) is entered into by and between RS Golf Course (“**Landlord**”) and Circle K Stores Inc. (“**Tenant**”) to evidence the delivery date of the Leased Premises, as described in that certain lease dated _____, 20____ between Landlord and Tenant for property located at South-East Corner of Golf Course Rd. & Westside Blvd., Albuquerque, New Mexico (the “**Lease**”). Capitalized terms not defined in this Agreement shall have the meaning set forth in the Lease.

Section 3.1 of the Lease provides that Landlord shall deliver possession of the Leased Premises to Tenant upon the satisfaction or waiver by Tenant of the Delivery Date Conditions. The Lease also requires Landlord and Tenant to execute this Agreement evidencing the Delivery Date.

As required by the Lease, Landlord and Tenant agree that the Delivery Date of the Leased Premises is _____, 20____.

The parties have caused this Agreement to be executed as of the respective dates below.

Landlord:

RS Golf Course, LLC,
a Texas limited liability company

By: [EXHIBIT ONLY] _____
Name: _____
Title: _____
Date: _____

Tenant:

Circle K Stores Inc.,
a Texas corporation

By: [EXHIBIT ONLY] _____
Name: _____
Title: _____
Date: _____

EXHIBIT “E”
to
ground lease
(NEW FACILITY)

COMMENCEMENT DATE AGREEMENT

This Commencement Date Agreement (“**Agreement**”) is entered into by and between RS Golf Course, LLC (“**Landlord**”) and Circle K Stores Inc. (“**Tenant**”) to evidence the commencement date of that certain lease dated _____, 20__ between Landlord and Tenant for property located at South-East Corner of Golf Course Rd. & Westside Blvd., Albuquerque, New Mexico (the “**Lease**”). Capitalized terms not defined in this Agreement shall have the meaning set forth in the Lease.

The Lease provides that the Primary Term of the Lease commences on the first day of the first calendar month following the earlier to occur of: (i) the date Tenant opens for business in the Leased Premises; or (ii) the expiration of the Construction Period (as extended under the Lease). The Lease also requires Landlord and Tenant to execute this Agreement evidencing the Commencement Date.

As required by the Lease, Landlord and Tenant agree that the Commencement Date for the term of the Lease is _____, 20__.

The parties have caused this Agreement to be executed as of the respective dates below.

Landlord:

Tenant:

RS Golf Course, LLC,
a Texas limited liability company

Circle K Stores Inc.,
a Texas corporation

By: [EXHIBIT ONLY] _____

By: [EXHIBIT ONLY] _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT "F"
to
ground lease
(NEW FACILITY)

When recorded, return to:
Circle K Stores Inc.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into by and among RS Golf Course, LLC, whose mailing address is 2560 King Arthur Blvd., Ste. 124-104, Lewisville, TX 75056 ("Landlord"), _____, whose mailing address is _____ ("Lender") and Circle K Stores Inc., a Texas corporation, whose mailing address is _____ ("Tenant").

RECITALS:

A. _____ and _____ are parties to a lease dated _____, as amended _____ (the "Lease"), for the real property located at _____, also known as Tenant's Unit number _____ and legally described on the attached Exhibit A (the "Premises"); and

B. Lender has agreed to make a loan to Landlord, which loan is to be secured by a realty mortgage, deed of trust or other security instrument (the "Mortgage") encumbering the Premises; and

C. Lender and Tenant desire to provide for, among other matters, the subordination of the lien of Tenant's leasehold interest in the Premises to the lien of the Mortgage and the non-disturbance of Tenant's enjoyment, use and occupancy of the Premises;

NOW, THEREFORE, in consideration of the mutual covenants and representations hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **SUBORDINATION.** The Lease and all of its terms and the lien of Tenant's leasehold interest and estate in the Premises created by the Lease shall be at all times hereafter subject to and subordinate to the Mortgage and to all renewals, modifications, replacements and extensions thereof with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution

and delivery of the Lease. The lien of the Mortgage shall not, however, encumber any of Tenant's trade fixtures, equipment, inventory or other personal property located at the Premises.

2. NON-DISTURBANCE AND RECOGNITION. Notwithstanding any provision in the Mortgage to the contrary, Lender agrees that in the event of a foreclosure of the Mortgage or other similar proceeding against Landlord that so long as Tenant is not in default under the Lease and continues to pay rent and otherwise comply with the terms and conditions of the Lease, then the Lease shall remain in full force and effect and Tenant's right to possession of the Premises will not be disturbed during the original term of the Lease or any renewal thereof. If any action or proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and provided further that Lender shall indemnify Tenant against all costs and expenses of such foreclosure action, including Tenant's reasonable attorneys' fees.

3. ATTORNNMENT BY TENANT. In the event that Lender or any other purchaser at a foreclosure or public or private sale (or by agreement in lieu thereof), or any successor-in-title to any of them ("New Owner") acquires title to the Premises, Tenant shall attorn to such New Owner and, so long as Tenant is not in default under the Lease, the Lease shall continue in full force and effect as a direct lease between Tenant and such New Owner upon all of the terms and conditions contained therein; provided, however, that New Owner shall not be:

3.1. liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "Prior Landlord") to perform any of its obligations under the Lease which have accrued prior to the date on which New Owner shall become the owner of the Premises, provided that the foregoing shall not limit New Owner's obligations under the Lease to correct any conditions that (i) existed as of the date New Owner shall become the owner of the Premises and (ii) violate New Owner's obligations as landlord under the Lease; provided further, however, that New Owner shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease;

3.2. subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which New Owner shall become the owner of the Premises, unless written notice of the same shall have been given by Tenant to Lender and to Prior Landlord in accordance with the Lease and this Agreement. New Owner will not be held liable for any consequential damages for defaults of any Prior Landlord. In the event New Owner acquires title or right of possession of the Premises, Tenant acknowledges and agrees that the liability of such New Owner under the Lease shall be limited to its interest in the Premises and the rents, income and profits therefrom;

3.3. liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by New Owner;

3.4. bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by New Owner or (ii) such prepayment shall have been expressly approved of by New Owner;

3.5. bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or New Owner's prior written consent prior to the time New Owner succeeded to Landlord's interest.

4. MISCELLANEOUS

4.1. Primacy of Agreement. In the event of any conflict or ambiguity between the provisions of this Agreement and those of the Mortgage, this Agreement shall be controlling in all respects. No provision herein shall be deemed an amendment or modification of any provision of the Lease.

4.2. Notices. Any notice required or permitted to be given herein shall be in writing and shall be delivered by hand, mailed by first class mail, postage prepaid, telecopied or sent by overnight courier to the addresses set forth at the beginning of this Agreement. Any such notice shall be deemed to be received: (a) if delivered personally, on the date of such delivery; (b) if mailed, on the third business day following mailing; (c) if telecopied, on the date of transmission; or (d) if sent by overnight courier, on the first business day following delivery to courier.

4.3. Attorney's Fees. In the event any party employs legal counsel to enforce or sue for a breach or anticipated breach of any provision of this Agreement, the prevailing party shall be entitled to recover all fees, charges, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection therewith.

4.4. Authority. Landlord, Tenant and Lender each represent and warrant that they have full power, right and legal capacity, and have received all necessary authorizations to execute this Agreement and to perform fully hereunder.

4.5. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof; all prior or contemporaneous promises and understandings related thereto having been superseded hereby. No provision of this Agreement may be amended, canceled, deleted or supplemented except by a writing signed by all of the parties.

4.6. Construction. If any party consists of more than one person, then their obligations hereunder shall be joint and several. This Agreement is a negotiated document, and the parties

have had the opportunity to have it reviewed by counsel. It reflects the "reasonable expectations" of the parties and as such, it shall be construed according to its fair meaning and without application of any drafting rule or presumption.

4.7. Governing Law; Successors and Assigns. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State where the Premises are located, shall run with the Premises and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4.8. Counterparts. This Agreement may be executed in counterparts, and any counterpart containing original signature pages of all parties shall constitute an original Agreement for all purposes.

4.9. Recordation. Lender may, at its sole cost and expense, record this Agreement in the Official Records of Bernalillo County, State of New Mexico, and shall thereupon deliver a copy of such recorded Agreement to Tenant at the above address.

4.10. Notice to Lender and Right to Cure. Following receipt of written notice from Landlord that the Mortgage has been recorded and is in effect, with Lender's notice address included in such notice, Tenant agrees to notify Lender of any default on the part of Landlord under the Lease which would entitle Tenant to cancel or terminate the Lease or to abate or reduce the rent payable thereunder, and Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease and no abatement or reduction of the rent payable thereunder shall be effective unless Lender has received notice of the same and has failed within thirty (30) days after Lender's receipt of said notice to cure the default which gave rise to the cancellation or termination of the Lease or abatement or reduction of the rent payable thereunder, provided that if the circumstances are such that said default cannot reasonably be cured within such thirty (30) day period and Lender has commenced to cure such default within such period and is diligently pursuing such cure, Lender shall have such additional period of time as may be reasonably necessary to cure such default. Notwithstanding the foregoing, Lender shall have no obligation to cure any default by Landlord.

LANDLORD:

RS GOLF COURSE, LLC, a Texas limited liability company

By: [EXHIBIT ONLY] _____

Name: _____

Its: _____

Date: _____

State of _____)

) ss.

County of _____)

The foregoing Agreement was acknowledged before me this ____ day of ____, 20__ by
, the _____ of _____, a _____, on behalf of the
_____.

Notary Public

Commission Expires _____

LENDER:

By: [EXHIBIT ONLY] _____

Name: _____

Its: _____

Date: _____

State of _____)

) ss.

County _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 20__ by
, the _____ of _____, a _____, on behalf of the
_____.

Notary Public

Commission Expires _____

Unit No. _____

EXHIBIT "A" (to SNDA)
LEGAL DESCRIPTION

EXHIBIT "G"
TO
GROUND LEASE
(New Facility)

(Memorandum of Lease)

WHEN RECORDED, RETURN TO:

Circle K Stores Inc.

Attn: Real Estate Department (DC56)

MEMORANDUM OF LEASE

This Memorandum of Lease ("**Memorandum**") is entered into by and between Circle K Stores Inc., a Texas corporation, located at 5500 South Quebec, Suite 100, Greenwood Village, Colorado ("**Tenant**"), and RS Golf Course, LLC, located at 2560 King Arthur Blvd., Ste. 124-104, Lewisville, TX 75056 ("**Landlord**"), to evidence the existence of a commercial lease containing the term described below (as amended from time to time, the "**Lease**") between Landlord and Tenant.

Effective Date: _____, 20____.

Description of Leased Premises: That certain real property located at South-East Corner of Golf Course Rd. & Westside Blvd., Albuquerque, New Mexico, as legally described on the attached **Exhibit A**.

Lease Commencement Date: _____, 20____.

Initial Term: Fifteen (15) years.

Renewal Options: Eight (8) for five (5) years each.

Option to Purchase or Lease: The Lease grants Tenant the option to purchase the Leased Premises on certain terms and conditions.

Restrictive Covenants: The Lease contains restrictions on adjacent construction and restricts certain uses on Landlord's properties within a mile of the Leased Premises.

The purpose of this Memorandum is to give record notice of the Lease (copies of which are held by and may be obtained from Landlord and Tenant at their respective addresses stated above) and of the terms and conditions of, and the rights created by the Lease, all of which are confirmed by Landlord and Tenant and incorporated into this Memorandum.

This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[remainder of page intentionally left blank]

Tenant:

Circle K Stores Inc., a Texas corporation

By: [EXHIBIT ONLY]

Name:

Title:

State of _____)
County of _____) ss.

On this _____ day of _____ 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of Circle K Stores Inc., a Texas corporation, who acknowledged to me that he/she/they executed the same in his/her/their authorized capacity on behalf of the corporation.

WITNESS my hand and official seal.

Notary Public

My Commission Expires

EXHIBIT "A"
TO
MEMORANDUM OF LEASE

(Legal Description of Leased Premises)

15792492_v15

15792492_V16

15792492_V24

15792492_V27